

Gary R. Botwinick Quoted In NJ.com Article, "What Kind Of Tax Will We Owe By Selling This Inherited Property?"

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Q. My siblings and I were left a commercial property by my father. The will specified his wife would collect rental income as long as she lived. Upon her death the property then goes to me and my siblings. If we sell the property after her death, are the proceeds taxed as inheritance or based on capital gains?

— Beneficiary

A. We're sorry to hear about your father.

Let's start with estate and inheritance taxes.

The feds have an estate tax, but there's an exemption of \$11.7 million per individual.

New Jersey no longer has an estate tax, but it does have an [inheritance tax](#), said Gary Botwinick, an estate planning attorney and chair of the wills, trusts and estates group at Einhorn, Barbarito, Frost & Botwinick in Denville.

But the inheritance tax is not levied on every kind of beneficiary, he said.

"Since this inheritance is from a father to children, who are considered Class 'A' beneficiaries for New Jersey's inheritance tax purposes, no inheritance tax is incurred," Botwinick said. "If the property is included in your stepmother's estate and the inheritance is considered received from her, rather than

your father, you still remain Class 'A' beneficiaries and thus, there is no inheritance tax incurred.”

Next, let's discuss [how capital gains work](#).

When an asset, like a share of stock, is purchased, the basis is established based on the purchase price. When the asset is ultimately sold, any taxable capital gain is determined by the difference between sale proceeds received and the basis of the asset, he said.

So if an investor invested \$100,000 in Apple stock in 2010 and sold it in 2021 for \$2 million, there would be a capital gains tax imposed on the investor for the \$1.9 million gain. The same goes for other capital assets, including real estate, he said.

“One of the wonderful features of the Internal Revenue Code is the concept of basis “[step-up](#)” at death,” Botwinick said. “This means that when the owner of an asset dies, regardless of how much the value of an asset increased during his or her lifetime, the beneficiary of such asset will inherit the asset with a new basis equal to the value of the asset at the date of death.”

In the example above, if the investor died at the moment before he intended to sell the stock, his family would inherit the Apple stock with a basis equal to \$2 million and the [capital gain](#) that had been achieved by the investor will no longer be subject to taxation, Botwinick said. If the beneficiary sells the stock the moment after the investor's death, there will be no tax due on that capital gain, he said.

Your question suggests that your father's real property was left in some manner in which your stepmother received all of the income during her life. Exactly how she inherited these rights, and how the inheritance was reported on an estate tax return that might have been filed when your father passed, is critical to determine your basis in the real estate when you and your siblings inherit it.

“If the manner in which your stepmother inherited the property requires that the property value be included in your stepmother's estate for Federal estate tax purposes — perhaps because a special election called a QTIP election was made — you will receive a stepped-up basis at her death as well,”

Botwinick said. “You could then sell the property and any appreciation between the date of your father’s death and your stepmother’s death will likewise escape capital gains tax.”

If, on the other hand, the property is not included in your stepmother’s estate — because the nature of the rights she received did not allow for your father’s estate to qualify the inheritance by your stepmother for the marital deduction for estate tax purposes — then there would be [no stepped-up basis](#) at your stepmother’s death, he said.

In that case, you would inherit the property with the same basis that existed prior to your stepmother’s death, he said.

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