

# Gary R. Botwinick Quoted In NJ.com Article, "What Tax Is Owed On The Sale Proceeds Of An Inherited Home?"

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By [Karin Price Mueller](#) | [NJMoneyHelp.com](#) for NJ.com

Q. My father's home in Florida was sold under an irrevocable trust, of which I am one of four beneficiaries. What federal and New Jersey taxes will apply? I have received a federal 1099 for the amount of \$38,700.

— Beneficiary

A. This is a tough question to answer because we haven't seen the terms of the trust.

But here are some general thoughts to take into consideration.

Typically, an [irrevocable trust](#) is established as part of a sophisticated estate plan, said Gary Botwinick, an estate planning attorney and chair of the wills, trusts and estates group at Einhorn, Barbarito, Frost & Botwinick in Denville.

"The trust is usually implemented in connection with a gift which is intended to be [complete and irrevocable](#), hence the name of the trust," he said.

Usually, the grantor or creator of the trust — presumably your father in this instance — will execute the trust and then make a gift of an asset or assets to the trust, he said.

“It sounds as if your father likely [gifted his house to this trust](#) for the benefit of you and three other beneficiaries,” Botwinick said. “I presume that your father subsequently passed and the trust sold the house with the proceeds to be split among the beneficiaries.”

Because you’ve received a 1099 in connection with the sale, it seems the trust distributed the home to the beneficiaries who then sold the property, he said.

When real property is sold, any gain earned as a result of the sale is subject to both federal and New Jersey taxation, Botwinick said.

“The gain is equal to the difference between the [net proceeds of the sale](#) and the taxpayer’s basis in the property,” he said. “Generally, the taxpayer’s basis is equal to the amount paid for the property plus the cost of all capital improvements made to the property.

Now is where things get interesting.

If you received the property in the form of a lifetime gift from your father — whether through a trust or outright — then your basis will be equal to your father’s basis in the property when he made the gift, he said. Because there are four beneficiaries, you would each have one-quarter of the basis that your father had, he said.

“Thus, if your father owned the property for many years, and the property appreciated either before or after the gift, then there is likely to be a capital gains tax that you will be required to pay,” he said.

Of course, Botwinick said, there are always exceptions to these rules depending upon the circumstances.

Given that we do not know the terms of the trust, or the manner in which your father might have used the house after having made the gift, it is impossible to determine if one of these exceptions applies, he said.

But, for example, if your father retained certain rights in that trust – including the right to the continued use of the home for the rest of his life, which is not unusual – then there might be relief to you on the tax.

“If an individual owns appreciated property at his death, both the IRS and New Jersey will allow the inheritors — or beneficiaries under a trust — to take the property with a ‘stepped-up’ basis, meaning that the basis steps up to the property’s fair market value and a sale will, therefore, produce no taxable gain,” he said.

If your father made a gift and [retained the use of the property](#), or certain other powers over the trust, for the remainder of his life, then that retained interest would cause the property to be included in your father’s gross estate for federal estate tax purposes, Botwinick said.

“That doesn’t mean that your father’s estate will owe estate taxes, as the federal estate tax exemption is now \$11.7 million, and both Florida and New Jersey have eliminated their estate taxes,” he said. “However, the house would still be included in [dad’s gross estate](#) and would, therefore, receive a stepped-up basis and the tax would likely be zero.”

We recommend you speak to a trusts and estate lawyer who could review the trust and advise you as to the proper tax treatment.

“These issues are complex and, with a maximum combined [New Jersey and federal tax rate](#) in excess of approximately 33%, it pays to investigate and ensure that you pay no more than is required,” he said.