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# Congress of the United States

## U.S. House of Representatives

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March 8, 2022

The Honorable Janet L. Yellen  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Secretary Yellen,

On December 7, 2021, the Oversight Subcommittee of the House Ways and Means Committee conducted a hearing entitled “The Pandora Papers and Hidden Wealth.” Our hearing revealed the extensive use of trusts by wealthy families in this country to transfer property for generations without the imposition of tax. While some states have passed their own laws to enhance this ability, we learned that gaps in federal tax law and failures to enforce aspects of current law have contributed greatly to this phenomenon.

The most glaring loophole in today’s income tax base is the ability of heirs to obtain tax-free stepped-up basis on appreciated assets they inherit upon the death of a taxpayer. My bill, H.R. 2286, would eliminate this loophole for wealthy taxpayers, and President Biden’s FY 2022 Green Book contained a similar proposal, for which I applaud the Administration. Unfortunately, neither my bill nor the President’s proposal has been enacted into law yet. However, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) under current law can take targeted actions to limit or even eliminate strategies that wealthy individuals and families use to exploit the stepped-up basis loophole.

One of those strategies is to claim stepped-up basis for assets in an irrevocable grantor trust upon the grantor’s death. A common estate planning technique used by wealthy individuals is to transfer assets to an irrevocable grantor trust while the individual is still alive. The trust’s property will generally not be included in the individual’s gross estate at death, thereby avoiding the estate tax. Internal Revenue Code section 1014 generally provides that the basis of property acquired from a decedent is the fair market value at the decedent’s death (“stepped-up basis”). Property is eligible for this treatment if it is acquired by bequest, devise, or inheritance or by the decedent’s estate from the decedent. Also eligible for the stepped-up basis treatment is property included in the decedent’s estate for federal estate tax purposes. Thus, assets outside the estate in an irrevocable trust do not qualify for Code section 1014’s stepped-up basis treatment under long-established interpretations of the language of Code section 1014.

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Testimony for the record of our hearing has brought to my attention that, in recent years, more aggressive estate planners have taken the position that the termination of an irrevocable trust at the death of the grantor should be treated as a “bequest” or “devise” under Code section 1014(b)(1). While the IRS rejected this theory in a Chief Counsel Advice memorandum in 2009 (CCA 200937028), it has yet to promulgate regulations to this effect. The failure to promulgate regulations means that taxpayers do not have to disclose that they have taken stepped-up basis under this novel theory on Form 8275-R. Without this disclosure, the IRS may never know that the trust or trust beneficiaries who sell the assets have claimed this benefit. Complicating matters is a 2012 private letter ruling (PLR 201245006) that seemed to imply that a transfer from an irrevocable grantor trust to another taxpayer at the grantor’s death would qualify as a “bequest, devise, or inheritance,” thus potentially qualifying for stepped-up basis treatment.

While the IRS announced it would no longer issue private letter rulings on this issue in 2015, it has not followed up with regulations, despite Treasury including this issue in its Priority Guidance Plan in 2015-2016. However, the 2021-2022 Priority Guidance Plan does not include it.

I would like to request that you promulgate regulations clarifying that the phrase “bequest, devise, or inheritance” in Code section 1014(b)(1) does not apply to the termination of grantor trust status upon the grantor’s death or to the transfer of an irrevocable grantor trust’s property upon a grantor’s death. Further, the regulations should be promulgated through notice-and-comment rulemaking to ensure they withstand Administrative Procedure Act scrutiny.

In the absence of a legislative change, it is imperative that wealthy individuals’ exploitation of the stepped-up basis loophole in the tax code be shut down where it can be, by prompt and aggressive regulatory action where there is a firm basis in law to do so. This is one of those opportunities.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill Pascrell Jr". The signature is written in a cursive style and is positioned above a horizontal line.

Bill Pascrell, Jr., *Chair*  
Subcommittee on Oversight

Cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy  
The Honorable Charles P. Rettig, IRS Commissioner  
Mr. William M. Paul, IRS Acting Chief Counsel