

Extension of Time to File Portability Return

By Gary Altman

Effective July 8, 2022, the IRS has extended the time frame for electing portability from 2 years to 5 years after the decedent's death under IRS Revenue Procedure 2022-32.

What is portability?

Portability is an estate planning tool and a way for spouses to combine their exemption from estate and gift tax. A surviving spouse can use the unused estate tax exemption of a deceased spouse. This allows the surviving spouse to have their own exemption from estate and gift tax and allows the unused exemption of the deceased spouse. To use the unused exemption of a deceased spouse, the deceased spouse's estate must file a federal estate tax return that makes the election so the surviving spouse can use the exemption. The big advantage of portability is the flexibility which allows spouses to do estate planning and transfer their assets as they choose.

The executor of a decedent's estate may transfer or "port" the decedent's unused federal estate tax exemption to the decedent's surviving spouse for later use. The procedure for "porting" the deceased's exemption to the surviving spouse involves filing a federal estate tax return (Form 706). If the decedent had an estate tax return filing obligation, the portability election is made on a timely filed return (or extended return). If there was no filing requirement, Revenue Procedure. 2017-34, granted an executor up to 2 years from the decedent's death to file a simplified Form 706 solely to make such an election. Executors who failed to meet this deadline and wished to elect for portability did so by requesting a Private Letter Ruling. The volume of Private Letter Ruling requests filed for this purpose appears to have sufficiently strained IRS resources to warrant this new Revenue Procedure.

Revenue Procedure 2022-32 extends the election process found in Rev. Proc. 2017-34 for those who did not initially meet the 2-year deadline. Executors who did not take advantage of the


portability election, where the deceased's surviving spouse has a substantial estate and no estate tax return was filed, it may make sense to have your situation reviewed. It could save your children or heirs as much as \$6 million dollars. This relief is available for decedents who died after December 31, 2010.

Why is this important and what can you do now?

If your spouse died after December 31, 2010, and you did not file an estate tax return, then it may make sense to have your situation and estate plan reviewed to determine if you should act now to take advantage of portability. This may be important no matter what your assets are, but specifically if you are a Maryland resident, and your assets are (or may someday) exceed \$5,000,000, or, no matter where you reside if your assets are (or may someday) exceed \$6,000,000. Filing an estate tax return to elect portability could save your children or heirs millions of dollars when you die. Contact the estate attorneys at Altman & Associates at 301-468-3220 to review.

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