

Don't forget about making a portability election

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Portability allows a surviving spouse to apply a deceased spouse's unused federal gift and estate tax exemption amount toward his or her own transfers during life or at death. For 2020, the exemption amount is \$11.58 million, and the IRS just announced that that amount will increase to \$11.7 million for 2021.

To secure these benefits, however, the deceased spouse's executor must have made a portability election on a timely filed estate tax return. The return is due nine months after death, with a six-month extension option. Unfortunately, estates that aren't otherwise required to file a return (because they don't meet the filing threshold) often miss the deadline.

Qualifying for an automatic extension

In 2017, the IRS made it easier for estates to obtain an extension of time to file a portability election. For all deaths after 2010, the IRS grants an automatic extension, provided:

- The deceased was a U.S. citizen or resident;
- The executor wasn't otherwise required to file an estate tax return and didn't file one by the deadline;
- The executor files a complete and properly prepared estate tax return on Form 706 within two years of the date of death; and
- The following language appears at the top of the return: "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)."

Other considerations

Portability isn't *always* the best option. All relevant factors should be considered, including nontax reasons that might affect the distribution of assets under a will or living trust. For instance, a person may want to divide assets in other ways if matters are complicated by a divorce, a second marriage or unusual circumstances.

In addition, absent further legislation, the federal gift and estate tax exemption is slated to revert to pre-2018 levels after 2025. Portability continues, though, for those whose estates will no longer be fully sheltered, so additional planning should be considered.

Don't miss the deadline

If your spouse predeceases you and you'd benefit from portability, be sure that your spouse's estate files a portability election by the applicable deadline. Please contact us with any questions you have regarding portability.

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