

IRS Announces Special Extension for Estate Tax Exemption

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Want to pass on more of your wealth without incurring estate tax? Yes please!

On July 8, 2022, the IRS issued a new revenue procedure allowing estates to elect "portability" of a deceased spousal unused exclusion amount to as much as five years after the decedent's date of death. Under this new procedure, the estate of the first deceased spouse could file for a portability extension, essentially filing a late estate tax return to be able to capture the unused exemption of the first spouse to die.

Put another way, the survivor would have their own exemption, plus the unused exemption, escaping all (or a large chunk) federal estate taxes.

How It Used to Work

The term "portability" is defined as "the ability to be easily moved". Previously, the extension was for two years, not five, and if an estate missed the two-year deadline, the estate was forced to request a private letter ruling. This was a potentially expensive and time-consuming process that does not guarantee a positive result.

The new procedure (Revenue Procedure 2022-32) provides a simplified, or more "portable" method for certain estates to obtain an extension to file a return on or before the fifth anniversary of the decedent's death, providing portability of the deceased spousal unused exclusion (DSUE) amount. No user fee is required for submissions filed under this revenue procedure.

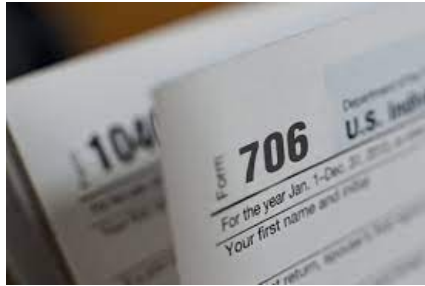
The simplified method of this revenue procedure is available to the executor (either an appointed executor or, if none, a non-appointed executor) of the estate of a decedent if:

1. The decedent: (a) was survived by a spouse(b) died after December 31, 2010; and (c) was a citizen or resident of the United States on the date of death.
2. The executor is not required to file an estate tax return under Section 6018(a) as determined based on the value of the gross estate and adjusted taxable gifts and without regard for the need to file for portability purposes.
3. The executor did not file an estate tax return within the time required by Section 20.2010-2(a)(1) for filing an estate tax return.

The prior burdensome requirement of having to file an election by way of a timely filed 706 has been done away with. An individual permitted to make the election on behalf of the estate of a decedent now must file a complete and properly prepared Form 706, United States Estate (and Generation-

Skipping Transfer) Tax Return, on or before the fifth annual anniversary of the decedent's date of death.

The executor filing Form 706 on behalf of the decedent's estate must state at the top of Form 706 that the return is "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)."



But Wait...There's More!

On December 31, 2025, unless Congress and the President act to extend the current estate tax exemption rules, the current federal estate tax exemption rules are set to expire. If no action is taken the federal estate tax exemption amount will revert to the level it was at in 2017 adjusted for inflation (likely somewhere between \$6.2 million and \$6.5 million per individual).

It is important that surviving spouses consult their estate planning attorney and discuss their planning documents to determine if portability election is a way to maximize the amount that may pass free of federal estate tax to their beneficiaries. Please do not hesitate to contact us for a free consultation.



We look forward to serving you & wish you the best

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