

IRS Extends Portability Election

By Geena Kandel

The Internal Revenue Service recently issued [Rev. Proc. 2022-32](#) which provides that estates may elect “portability” of a deceased spouse’s unused exclusion (DSUE) up to five years after the decedent’s date of death.

Portability allows spouses to combine their exemption from estate and gift tax. This allows a surviving spouse to use the unused estate tax exemption of the deceased spouse. For example, Spouse 1 dies in 2022 when the estate tax exemption is \$12.06 million. During his lifetime, Spouse 1 had only used \$1 million of his exemption amount. This means the deceased spouse’s unused exclusion (DSUE) amount is \$11.06 million. Surviving Spouse can elect portability to claim Spouse 1’s \$11.06 million DSUE amount.

Prior to Rev. Proc. 2022-32, the due date of an estate tax return that was required to be filed (regardless of whether the decedent’s estate was electing portability) was nine months after the decedent’s death or the last day of the period covered by an extension, if one had been obtained. The IRS extended the deadline to elect portability (for estates not required to file estate tax returns) to two years after the decedent’s death in Rev. Proc. 2017-32. However, the IRS observed that they were continuing to issue numerous private letter rulings from estates that failed to meet the two-year deadline. The IRS noted that many of these requests for portability relief occurred on or before the fifth anniversary of a decedent’s date of death. This led to the issuance of current Rev. Proc. 2022-32, which extends the portability election period to five years.

Rev. Proc. 2022-32 is effective July 8, 2022.

How can the estate of a deceased person elect portability? To elect portability, the executor (in Florida, the “Personal Representative”) of the estate files an estate tax return, on or before the fifth anniversary of the decedent’s date of death. This estate tax return is known as a Form 706. The executor must note at the top of the Form 706, that it is “filed pursuant to Rev. Proc. 2022-32 to elect portability under Sec. 2010(c)(5)(A).”

Who is eligible to elect portability? The decedent must have been a US citizen or resident on their date of death and the executor must not have been otherwise required to file an estate tax return. This means the decedent was under the estate tax exemption amount at the time of their death. In 2022, the estate tax exemption is \$12.06 million for a single person.

This new development benefits taxpayers by giving them more time to elect portability, which in turn gives them the opportunity to pass more of their wealth without incurring estate tax. Please feel free to contact our estate planning team if you have any questions or would like to discuss your estate planning goals.

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