

Automatic extension available for making portability election

Published on December 20, 2018

Portability allows a surviving spouse to apply a deceased spouse's unused estate tax exemption amount toward his or her own transfers during life or at death. 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. Several years ago, the IRS offered a simplified procedure for obtaining an extension, but it was available only through the end of 2014. After that, the only option was to request a private letter ruling from the IRS, a time-consuming, expensive process with no guarantee of success.

In 2017, however, the IRS made it easier (and cheaper) for estates to obtain an extension of time to file a portability election. For all deaths after 2010, IRS Revenue Procedure 2017-34 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)."

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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