

IRS simplifies procedure for obtaining extension to make portability election

Published on July 6, 2017

The IRS issued Revenue Procedure 2017-34, effective June 9, 2017, that allows certain estates to make a late portability election without first filing a ruling request. Portability is a tax law provision that permits a surviving spouse to take advantage of the deceased spouse's unused combined gift and estate tax exemption (currently \$5.49 million).

But portability isn't automatic: It's available only if the deceased spouse's estate makes a portability election on a timely filed estate tax return. This return is due nine months after death, with a six-month extension option, regardless of whether any tax is owed.

What's new?

Previously, if a deceased spouse's estate failed to make a timely portability election, the surviving spouse's only recourse was to request a private letter ruling from the IRS — a costly and time-consuming process. Revenue Procedure 2017-34 grants an automatic extension for taxpayers not otherwise required to file an estate tax return, provided they file a return making the election on or before the *later* of:

- The second anniversary of the deceased's death, or
- January 2, 2018.

If these requirements are met, the estate may make the election by filing an estate tax return with the following language at the top: "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER SECTION 2010(c)(5)(A)."

Is portability right for you?

The portability provision can provide a safety net for couples with joint assets exceeding the exemption amount of the estate of the first spouse to die. We can answer any questions about making the portability election.

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