

# 2010 Tax Relief Act: New Concept Known as "Portability" is Introduced

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This is the next article in a series of e-Alerts that addresses how the new Tax Relief Act of 2010 (the "Tax Relief Act") enacted on December 17, 2010 impacts you. The Tax Relief Act introduced a new concept to federal estate and gift tax planning known as "portability". In a nutshell, portability is the ability for spouses to share their estate tax exemptions with each other by making certain elections in the estate of the first spouse to die. The portability provisions of the Tax Relief Act allow a surviving spouse to use the unused exemption from his or her deceased spouse to transfer property during life or at death free from federal estate tax.

Many of our married clients may be thinking that the new law, with its \$5,000,000 exemption and portability provisions, eliminates the need for planning with a By-pass Trust\* structure. Perhaps your impression is that bequeathing all of your assets to your spouse through a simple Will or ownership of jointly owned property is a suitable tax plan now.

We beg to differ! The importance of utilizing a By-pass Trust in your estate plan should not be overlooked. For starters, portability only applies to the federal estate tax law – not to the state estate law, which exists in most states including Rhode Island and Massachusetts. Portability does not apply for generation skipping tax purposes, so clients who want to benefit their grandchildren should not rely on portability to maximize this opportunity. Additionally, portability only applies for the years 2011 and 2012, unless another change in the law is enacted prior to January 1, 2013.

The traditional benefits of a By-pass Trust should always be considered. These include:

- Estate tax free appreciation of the assets allocated to the Trust.
- Preserving assets for children of a prior marriage.
- Preserving creditor protection of the assets allocated to the Trust.

\*(This structure is also commonly known as an A-B Trust plan and involves the funding of a trust at the death of a taxpayer known alternatively as a By-pass Trust, Unified Credit Trust, Residuary Trust or Family Trust.)

The Probate, Trust and Personal Planning Group at Partridge Snow & Hahn LLP is dedicated to fully informing you on the impact of this important legislation. We will continue to analyze these and other issues, and are always available for a consultation to discuss how these issues impact your personal situation.

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