

Understanding the Estate Tax Portability Provision

by Frank L. Brunetti on August 9, 2013

Many affluent Americans and business owners breathed a sigh of relief when lawmakers prevented the federal estate tax exemption from reverting back to \$1 million at the beginning of the year. Instead, Americans can exempt an indexed \$5.25 million from federal estate taxes or \$10.5 million for those who are married and file joint returns. However, another popular aspect of the tax law put in place by lawmakers is what is known as the estate tax portability provision.

This addition allows individuals to potentially double their federal estate-tax exemption. The law allows for the transfer of the federal estate-tax exemption from the estate of the first spouse to pass away to the estate of the second spouse. This means that if a husband passes away, leaving his spouse \$5.25 million, this amount may be transferred and then combined with the surviving widow's own \$5.25 million exemption. This would allow the surviving spouse to pass on \$10.5 million upon his or her death to beneficiaries and loved ones.

During this type of estate tax planning however, it's important for spouses who want to take advantage of this provision to understand the correct guidelines and protocols around it. For example, in order to claim this opportunity, surviving spouses must file IRS Form 706 within nine months of the spouse passing away, a recent MarketWatch report reminded readers. As the months following the death of a spouse can be wrought with emotion, grief and a significant amount of legal complexities, widows may apply for a six-month extension by filing Form 4768 to give them more time.

Because many Americans may be unfamiliar with this provision and the rules surrounding it, it's important to work with a well-reputed estate tax attorney to gain more knowledge of these laws and timelines. Doing so can help couples avoid costly mistakes and lost opportunities related to estate planning.