

Deadline to Make Portability Election Extended

[Probate, Trust and Personal Planning Practice Group](#)

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The Internal Revenue Service has issued guidance which allows estates of individuals who died during the first six months of 2011 to extend the deadline to make a portability election.

The portability election is the ability for spouses to share their estate tax exemptions (\$5,000,000 for 2011 decedents and \$5,120,000 for 2012 decedents) 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.

Under previous guidance, an estate had to elect portability within 9 months of the date of death on a timely filed estate tax return, even if the executor was not otherwise obligated to file an estate tax return. Under this recent IRS guidance, estates of individuals who died within the first 6 months of 2011 may extend the time to elect portability by filing an application for extension of time to file an estate tax return (Form 4768) within 15 months of the date of death. The portability election still must be made on an estate tax return (Form 706) within the extended time frame.

This notice is another clarification by the IRS in the wake of the sweeping changes brought about by the Tax Relief Act of 2010, which increased the federal estate tax exemption to an unprecedented \$5,000,000, indexed for inflation, and introduced the concept of portability.

For more information on portability, please visit this link:

["2010 Tax Relief Act: New Concept Known as Portability is Introduced"](#)

For further information contact a member of the Probate, Trust & Personal Planning Group.

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