

Expanded Deadline to Elect Estate Tax Portability – Five Year Window

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The IRS has updated its procedure for estates requesting an extension of time to make a portability election under Code Sec. 2010(c)(5)(A). The updated procedure replaces that provided in Rev. Proc. 2017-34.

As a result, estates now have five years after a decedent's death to elect portability of a deceased spousal unused exclusion (DSUE) amount; the previous rule required that the election be made within two years of death.

If an individual dies in 2022 and has less than \$12.06mm in their gross estate then they are not required to file a federal estate tax return (but still may be required to file in Massachusetts). Even though they have no federal filing obligation, if they are survived by a spouse they can file a simplified return to elect to "port over" whatever exemption amount is unused by their own assets, and give that unused exemption to their surviving spouse. The surviving spouse then has the advantage of their own exclusion amount (currently \$12.06mm) plus the DSUE from the pre-deceased spouse. The election must now be made within five years of decedent's death. Massachusetts does not have portability.

This procedure will become particularly relevant when the increased exemption amount sunsets on January 1, 2026. At that point, instead of a \$12mm+ exemption, the amount will revert to closer to \$6mm and the advantage of having the DSUE will be even more pronounced. Please reach out to a member of your client service team with any questions or if we can be of assistance.

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