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Ken Berry • Nov. 14, 2014



The portability provision can literally save a family millions of federal estate tax dollars if a timely election is made. For some clients who missed the boat, there's still a little time left to sail off happily into the sunset, thanks to a special IRS ruling issued earlier in the year (Rev. Proc. 2014-18).

Background: Under the American Taxpayer Relief Act (ATRA), the top estate tax rate was etched in stone at 40%, the federal estate exemption was set at \$5 million per

individual (subject to annual indexing), and the portability provision was preserved

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However, there's a catch. To benefit from the portability provision, an election must be made on Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, including a computation of the DSUE amount. The election is effective only if it is made in a timely fashion. Therefore, portability must be elected on an estate tax return filed within nine months of death, plus any extension. Once the estate tax return is filed, the executor of an estate of a decedent survived by a spouse will be treated as having elected portability of the DSUE amount.

Unfortunately, some clients didn't take the steps required to benefit from the DSUE amount during the last few years. Fortunately, the IRS says in the new ruling that that retroactive relief is still available to estates of decedents dying after December 31, 2010 and before January 1, 2014, as long as a properly filled-out Form 706 is filed before January 1, 2015.

In other words, if a client's spouse passed away in one of three open tax years – 2011, 2012 or 2013 – the portability election can still be made. The estate savings can easily reach into seven figures.

Example: Husband died in 2011 when the estate tax exemption was \$5 million. He owned \$2 million in assets individually that he bequeathed to his children and \$3 million in joint ownership with rights of survivorship with Wife. So only \$2 million of the \$5 million exemption was used. The portability election wasn't made on a timely estate tax return for Husband.

Now suppose Wife dies in 2014. If the retroactive election is made under the new IRS ruling, Wife's estate can pass up to a total of \$7.34 million in assets to heirs with zero federal estate tax liability (\$3 million in DSUE plus \$4.34 million). The estate tax savings? At the 40% rate, it comes to a staggering \$1.2 million (40% of \$3 million DSUE)!

Recommendation: When appropriate, alert your clients about this unprecedented

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