

Smaller Estates of 2011, 2012 and 2013 Decedents Can Submit "Late" Portability Filings

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"Portability" is the ability of a spouse to preserve the unused federal estate tax credit of their pre-deceased spouse and apply it against their own estate tax liability. It is an important estate tax tool for couples, allowing them to shelter more than \$5,000,000 from federal estate taxes. It is especially valuable for those couples who did no or inadequate estate tax planning, since the election is made after the death of the first spouse. Revenue Procedure 2014-18 permits executors of smaller estates (those that would not ordinarily have filed a federal estate tax return) of decedents who died in 2011, 2012, and 2013 to elect portability despite having missed the original time deadlines. This procedure expires December 31, 2014. This is an important benefit for clients who qualify and requires immediate action. Congress made a "portability" election available and permanent in late 2010. The election requires the executor or other representative to file a Form 706 estate tax return within nine months after death, or within a timely-requested extension. However, executors of many decedents who died in 2011, 2012, and 2013 were not aware of the availability of "portability" and did not file a timely Form 706 to elect. This is especially true for decedents whose estates were under \$5,000,000 and therefore had no federal estate tax obligation and no other need to file Form 706. Although the IRS established a private letter ruling procedure for these estates, it is expensive and discretionary. The potential estate tax savings for a surviving spouse who files for portability are 40 percent of the amount by which that spouse's estate exceeds the then-current federal estate tax exemption (currently more than \$5,300,000) and can exceed \$2,000,000. Even though a couple's assets may be significantly below the \$5,000,000 level at the first spouse's death, the potential increase in asset values over time and before the death of the second spouse make this an important estate planning tool.

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