

# IRS Extends Late Portability Election, Gives Tax Benefit to Estates

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On July 8, 2022, the IRS issued a [new procedure](#) that can be used to extend estate tax portability for up to five years after the death of a spouse.

This could be extremely useful for individuals who sought estate planning more than two years after the death of their spouse.

In 2010, Congress enacted legislation that permitted the estate of a deceased person to “port” their federal estate tax credit (currently \$12.06 million) for use by the estate of their surviving spouse upon that spouse’s death. The election is beneficial for couples who did not sign wills during their lifetimes that provided for this.

Before this new procedure, the estate elected portability by filing an estate tax return within the statutory limits after the death of the first spouse — that is, essentially, within 18 months after the death. After that, the executor would have to file for a letter ruling and submit substantial evidence to extend the portability.

Even if a deceased spouse did not have a taxable estate, the couples’ combined estates could be very substantial.

As of January 1, 2026, unless the law changes, the federal estate tax exemption will fall to \$6 million. In context, for example, the heirs of a couple who owned \$12 million in assets, with the first spouse having died with a small estate, would face federal estate tax at 40-50+% of the amount over \$6 million, plus state taxes in states like New York.

A portability election could greatly reduce or eliminate the estate tax on the death of the second spouse.

The new election is simple. The executor (formal or informal) files an estate tax return, which says on the top that it is filed to elect portability under the applicable regulation.

For more information on this development, or assistance with estate planning, please contact the author of this article.

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