

IRS UPDATES LATE PORTABILITY ELECTION PROCEDURES



Under federal estate and gift taxes rules, a portability election allows a decedent's unused estate tax exemption amount (deceased spousal unused exclusion amount, or DSUE amount) to be available to their surviving spouse.

Background

The federal estate tax exclusion is \$12,060,000 per person in 2022. This amount is indexed annually for inflation. This means that an individual can give away \$12,060,000 during their life or at death without being subject to the estate tax.

Typically, when someone dies with a total estate that is under the lifetime exclusion amount, no estate tax filing is required since there would be no tax due; however, any unused portion of this lifetime exemption can be "ported" to their surviving spouse via [IRS Form 706](#). The time prescribed by the tax law to file Form 706 is nine months from the date of death. A six-month extension can be obtained, making the total time for filing 15 months from the date of death.

The IRS was receiving many requests for private letter rulings related to obtaining a portability election after the nine- and 15-month due dates for Form 706 not otherwise required to be filed. As a result, the Treasury Department and IRS provided relief via [Rev. Proc. 2017-34](#), which provides a simplified method for of

receiving an extension of time to file a “portability only” Form 706 to the second anniversary of the decedent’s date of death. Even still, the IRS has continued to receive requests for private letter rulings for granting an extension of time to file past this two-year period.

Updated Guidelines

To simplify, the IRS recently issued [Rev. Proc. 2022-32](#) to provide a new simplified method that allows estates to elect “portability,” extending the due date to the fifth anniversary of the decedent’s date of death.

[BMF Advisors](#) are here to help you determine the best options for all your estate and tax planning needs.