

Estate Tax and Late Portability Election

IRS issued Revenue Procedure 2022-32 focusing on the estate tax Portability Election. Briefly the Revenue Procedure allows qualifying estates to make this election on a late return as long as it is filed within five years of the date of the decedent's death. Of course, there is the fine print regarding qualification. Here is an intro to this election and a bit of history.

Unified Credit– Effective for estates of decedents dying after December 31, 2010, the unified credit allowed against a decedent's estate tax is based on a taxable estate of \$5,000,000 or more. This is also known as the “applicable exclusion amount.” This same “unified credit” applies to taxable gifts during the taxpayer's lifetime. If the taxpayer's taxable gifts PLUS the net amount subject to estate tax totals more than the unified credit, the taxpayer (or estate) will have a tax to pay on the excess.

Effective for the estates of decedents dying after December 31, 2010, a portability election can be made. This election permits the taxpayer's estate to elect to transfer any of its applicable unused exclusion amount to the decedent's surviving spouse. This election must be made on a timely filed return. However, taxpayers can apply for a private letter ruling to ask for additional time.

IRS has now determined most requests for these private letter rulings have come in within five years of the decedent's death and IRS has approved most of them. In lieu of the letter ruling and in an effort for efficient tax administration, IRS is now providing an automatic procedure in Revenue Procedure 2022-32.

The new deadline for making the portability election is five years from the date of the decedent's death. This Revenue Procedure applies only to the estates of a decedent IF:

- 1) The decedent:
 - a) Was survived by a spouse,
 - b) Died after December 31, 2010, and
 - c) Was a citizen or resident of the United States on the date of death.
- 2) The executor was not required to file an estate tax return based on the value of the gross estate and adjusted taxable gifts and without regard to the need to file for a portability election.
- 3) The executor did not file an estate tax return within the time required for filing.
- 4) The executor satisfied all the requirements of section 4.01 of this revenue procedure.

The executor should file a properly completed Form 706 on behalf of the decedent's estate. At the top of the Form 706, the executor should state “FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)”.

If a late portability election is of interest, please read Revenue Procedure 2022-32 for more details.

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