

Relief For Late Portability Elections

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The Greater Bridgeport Bar Association, Inc - News Brief

On January 27, 2014, the Internal Revenue Service issued Rev. Proc. 2014-18, which provides relief for certain estates that failed to make a timely portability election to secure the unused federal estate tax exemption of a decedent for use by their surviving spouse.

The concept of “portability” was first introduced under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and allowed for Executors to make an election which would make the decedent’s unused exclusion amount available to be applied to transfers made by his or her surviving spouse during lifetime or at death. Under the 2010 Act, the portability feature was originally only applicable if both spouses died in 2011 or 2012.

The American Taxpayer Relief Act of 2012 (“ATRA 2012,” P.L. 112-240) extended the availability of portability to decedents dying after December 31, 2010. ATRA 2012 provides that portability must be affirmatively elected on a timely filed United States Estate Tax Return (Form 706), even if the return is not otherwise required. It is limited to the unused estate tax exemption of the last deceased spouse of the surviving spouse, and is not applicable to generation-skipping transfer tax exemption or Connecticut Estate Tax exemption.

Rev. Proc. 2014-18 provides a simplified method for certain taxpayers to obtain an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a portability election under § 2010(c)(5)(A) of the Internal Revenue Code.

Rev. Proc. 2014-18 applies only if:

1. The taxpayer is the executor of the estate of a decedent who: (a) has a surviving spouse, died after December 31, 2010, and on or before December 31, 2013, and (c) was a citizen or resident of the United States on the date of death;
2. The taxpayer is not required to file an estate tax return under I.R.C. § 6018(a).
3. The taxpayer did not file an estate tax return within the time prescribed by the Treasury Regulations for filing an estate tax return required to elect portability; and
4. All of the procedural requirements of Section 4 of Rev. Proc. 2014-18 are satisfied.

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If all of the criteria are satisfied, the Executor may make a portability election on a United States Estate Tax Return filed by December 31, 2014.

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