



Potential Estate Tax Savings: \$2,196,000 Filing Deadline: January 2, 2018

The Federal government currently imposes a transfer tax on each individual's ability to make gifts and bequests. The top rate is 40%.

In 2011, there was an exemption so that the first \$5,000,000 transferred by a decedent was non-taxable. The exemption, adjusted for inflation, has steadily increased to \$5,490,000.00 for 2017.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 introduced the concept of "portability" of the federal estate tax exemption for 2011 and 2012 which was made permanent by the American Taxpayer Relief Act of 2012.



Portability allows the personal representative (or executor) of a deceased spouse to make an election on the decedent's Estate Tax Return (Form 706) to transfer or "port" such deceased spouse's unused exclusion amount (called the "DSUE amount") to the surviving spouse.

For example, if the first spouse to die had an estate of \$1,000,000, leaving a DSUE of \$4,490,000, the surviving spouse would have an exemption of 9,980,000.

Therefore, if properly planned, in 2017 a married couple can transfer \$10,980,000 to their beneficiaries without the imposition of the 40% tax regardless of which spouse died first.

As mentioned above, the portability is available only if elected on the Form 706 of the first spouse to die.

An Estate Tax Return (Form 706) is required to be filed within nine months of the decedent's death, but no Return is required for estates of less than the exemption amount. Therefore, many sizable estates have filed no Form 706.

The IRS issued Rev. Proc. 2017-34 to allow an executor to file a Form 706 within two years (instead of nine months) of the decedent's death if necessary to elect portability.

Further, for any first-to-die spouse who died after 2010, the IRS has provided an opportunity to file a Form 706 to elect portability. And, if the surviving spouse has already died, and owed an estate tax, an amended Return can be filed to claim up to a \$2,000,000 refund. The deadline for these filings is January 2, 2018.

If the electing Form 706 is not timely filed, in the most extreme case, the couple would lose the first spouse's entire exemption and the tax on a second spouse's estate of \$10,980,000 would be \$2,196,000 instead of \$0.00.

Yes, there is much talk regarding the repeal of the Federal Estate Tax. But, it will require an Act of Congress passed by both the House of Representatives and the Senate to accomplish that. There can be no assurance that this Congress - or any Congress - can achieve that. Further, there can be no assurance that a future Congress won't reinstate the tax even if it is repealed.

Although a couple may feel they are within the exemptions, appreciation of the surviving spouse's assets could create an unnecessary tax.

Form 706 is not a simple document. Contact [Alan C. Roeder](#) or any one of our [estate planning](#) attorneys to assist you with the preparation.