

Practice Update

Deadline Extension to Elect Portability of Unused Estate Tax Exemption

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Those who have been involved with an estate of a decedent who died in 2011, 2012, or 2013, should be aware of an important upcoming deadline. The IRS has granted an extension of time (only until December 31, 2014), to elect portability of the unused estate tax exemption amount for the estate of a decedent who died in 2011, 2012 or 2013.

Portability Background

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 introduced the concept of “portability” of the estate tax exemption amount. Portability allows a married couple to “share” their combined estate tax exemption amounts. If the executor of a decedent’s estate makes the election for portability, the decedent’s unused estate tax exemption amount is locked in and will be available to the decedent’s surviving spouse, either during life or at death. In order to take advantage of the benefits of portability, a portability election must be made on a timely filed estate tax return, even if the estate was not otherwise required to file a return.

After December 31, 2012, the estate tax exemption amount was supposed to be reduced to only \$1,000,000, and portability was to be repealed.

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Although Congress acted at the eleventh hour to maintain the estate tax exemption amount and to make portability a “permanent” feature of the Tax Code, Congress may decide to reduce the estate tax exemption amount again, or abolish portability, or both. By filing an estate tax return to elect portability, the unused estate tax exemption amount will be locked in, regardless of any future actions taken by Congress.

Members of Akerman’s Trusts & Estates Practice will continue to monitor and report on developments associated with portability of the estate tax exemption amount. If you have any questions or would like more detailed information regarding these developments, please feel free to contact the authors.

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