



Automatic Extension Available for Making Portability Election

An unfortunate reality about outliving a spouse is that during the time when the pain and grief are very new, important financial and estate planning activities must be carried out. Often times, even when careful plans are made, some details get lost in the shuffle. One item that sometimes goes unnoticed that also has a limited window of opportunity is the portability election.

Portability allows a surviving spouse to apply a deceased spouse's unused estate tax exemption amount toward his or her own transfers during life or at death. To secure these benefits, however, the deceased spouse's executor must have made a portability election on a timely filed estate tax return. The return is due nine months after death, with a six-month extension option.

Unfortunately, estates that aren't otherwise required to file a return (because they don't meet the filing threshold) often miss the deadline. Several years ago, the IRS offered a simplified procedure for obtaining an extension, but it was available only through the end of 2014. After that, the only option was to request a private letter ruling from the IRS, a time-consuming, expensive process with no guarantee of success. In 2017, however, the IRS made it easier (and cheaper) for estates to obtain an extension of time to file a portability election. For all deaths after 2010, IRS Revenue Procedure 2017-34 grants an automatic extension, provided:

- The deceased was a U.S. citizen or resident,
- The executor wasn't otherwise required to file an estate tax return and didn't file one by the deadline,
- The executor files a complete and properly prepared estate tax return on Form 706 within two years of the date of death, and
- The following language appears at the top of the return: "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)."

For more information or assistance with this and other planning opportunities, contact your Anchin relationship partner or Jared Feldman, Co-Leader of Anchin Private Client, at 212.840.3456 or info@anchin.com.



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