

# Portability Election Simplified Method

## Cross References

- Rev. Proc. 2017-34

A decedent is allowed an exclusion amount against the Federal Estate and Gift tax. For decedent's dying in 2017, the inflation adjusted exclusion amount is \$5,490,000. This means that for decedent's dying in 2017, lifetime gifts plus the value of assets included in the gross estate up to \$5,490,000 are excluded from the Federal Estate tax. For purposes of the Federal Estate and Gift tax, a portability election allows a surviving spouse to add the decedent's unused estate and gift tax exclusion amount to the surviving spouse's own exclusion amount. For example, if a decedent dies in 2017 with total lifetime gifts and a gross estate of \$3 million, the surviving spouse can elect to add \$2,490,000 (\$5,490,000 minus \$3,000,000) to his or her own exclusion amount.

The executor of the estate of the deceased spouse must elect portability of the unused estate and gift tax exclusion amount by filing an estate tax return for the decedent within nine months of the decedent's date of death (plus extensions) and include a calculation of the unused exclusion amount on that return. A return must be filed by the executor to elect portability even if the decedent was not otherwise required to file a Federal Estate tax return.

Regulation section 301.9100-3 provides relief for executors who fail to make the election by the due date of the return by allowing an extension of time to make the election under certain circumstances. Generally, since December 31, 2014, executors needed to apply via a private letter ruling to request the IRS to grant an extension of time to make the election. As a result of numerous requests for relief, the IRS has issued a new revenue procedure for a new simplified method to make the election.

**New simplified method.** A new simplified method is available to the executor of the estate 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 is 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 portability purposes,
- 3) The executor did not file an estate tax return by the due date of the estate tax return, and

- 4) The executor satisfies the following requirements:
  - a) The executor must file a complete and properly prepared Form 706 on or before the later of January 2, 2018, or the second annual anniversary of the decedent's date of death.
  - b) The executor filing the Form 706 states at the top of the Form 706 that the return is "FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)."

If the executor does not satisfy the above requirements, the executor can still request relief by requesting a private letter ruling under the provisions of Regulation section 301.9100-3.

This simplified method does not extend the period during which the surviving spouse or the surviving spouse's estate may make a claim for credit or refund as a result of making the portability election under this revenue procedure.

This simplified portability election procedure is effective June 9, 2017.