

The Wealth Counselor

A monthly newsletter for wealth planning professionals

Tell Your Clients It's Not Too Late for a Portability Election

New Opportunity for Late Portability Just Opened Up by IRS

Portability has brought both convenience and confusion to the estate planning community. Available for surviving spouses after 2011, portability allows an unused estate tax exemption to be transferred from a deceased spouse to his or her surviving spouse.

While this sounds like an appealing prospect to look into for your clients, it has come with its fair share of hassle thanks to ever-shifting policies and narrow windows of time in which to take action. Taking advantage of portability has been harder in practice than was anticipated.

IRS Revenue Procedure 2017-34

Previously, surviving spouses had a mere 15 months (9 months plus a 6-month automatic extension) in which to elect portability after the death of their partner. As you know, your clients are only human: The experience of losing a spouse is always a trying one, and their priorities are rarely focused on legal and financial matters in the year following such a huge life event. It's all too easy to go past the deadline, especially if an estate tax return is not required by the IRS.

But this summer, the IRS has amended the way the portability deadline works. Now is the perfect time to share this good news with your clients and save them potentially hundreds of thousands of dollars in taxes in the long run. Here are the significant developments put forth by this new IRS procedure, which was just announced on June 26, 2017:

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Condie & Adams, PLLC is a values-driven law firm committed to providing individuals, families and small businesses with personalized, client-centered legal services in estate planning, probate and trust administration, tax planning, and related legal matters.

- **Late filing relief:** Executor spouses can now file a late portability election until January 2, 2018, for spouses who have passed away any time after 2011. This is a significant opportunity, but you and your clients must act quickly to take advantage of it. Previously, those who didn't elect portability were left with the unappealing option of trying for a private letter ruling to try to get it. This revenue procedure makes late filing possible for a much greater spectrum of clients. There are, of course, some qualifying criteria, so please give us a call to discuss any specific clients you think might benefit.
- **Increased time to act:** Whereas surviving spouses previously had 15 months to elect portability, they now have two full years. The IRS deadline is either January 2, 2018, or two years after the death of the spouse, whichever is later.

What else does this mean for my clients' estate plans?

Not only could this new procedure save significant taxes upon the death of the surviving spouse — but it could also open up estate planning opportunities that might otherwise not be available. For example, a surviving spouse may make a significant lifetime gift using the added exemption and avoid paying gift taxes.

This development simplifies elections for portability for those who were late and not otherwise required to file an estate tax return (i.e. those with estates less than \$5 million, as adjusted each year). But, the “classic” 15-month rule still applies for clients whose estates contain over \$5.49 million.

Any client who lost a spouse since portability came into effect after 2011 should at least look at whether it makes sense to file a “late” estate tax return now. The time for relief is limited. Does this situation affect any of your clients? Now is the time to share the good news with them, collaborate with us, and help your clients achieve their estate planning and wealth preservation goals.

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You have received this newsletter because I believe you will find its content valuable. Please feel free to [Contact Me](#) if you have any questions about this or any matters relating to estate planning.

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