

## Tax Notes Newsletter

# Estates: IRS Extends Late Portability Election Relief to 5 Years

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For estates that are not normally required to file tax returns because their value is under the filing threshold, IRS Rev. Proc. 2022-32 increases the time to elect portability of a deceased spouse's unused exclusion amount (known as DSUE) from two to five years after the decedent's date of death.

For purposes of federal estate and gift taxes, a portability election allows the executor of an estate to elect to carry over the decedent's unused lifetime exemption amount to the surviving spouse. Portability allows the surviving spouse to apply the deceased spouse's DSUE amount to the surviving spouse's own subsequent transfers made during life or at death.

### Backdrop

Since 2017, pursuant to Rev. Proc. 2017-34, estates had a two-year timeframe after the decedent's date of death to make a late portability election under a simplified automatic relief method if the estate was not otherwise required to file an estate tax return. This simplified method became available in lieu of obtaining a private letter ruling from the IRS. Rev. Proc. 2022-32 supersedes Rev. Proc. 2017-34 and becomes the only method by which a late portability election can be made for qualifying estates.

Despite the relief this simplified method provided, the IRS noted that it continued to issue numerous letter rulings with regard to granting an extension of time to elect portability beyond the expiration of the two-year window in situations in which the decedent's estate was not required to file an estate tax return. The IRS observed that a vast majority of these ruling requests originated from estates of decedents who died within five years preceding the date of the request.

In hopes of reducing the number of letter ruling requests, Rev. Proc. 2022-32 seeks to extend the period within which an estate may make the portability election under the simplified method to on or before the fifth anniversary of the decedent's date of death.

### Requirements

Rev. Proc. 2022-32 is available to executors in cases where the decedent passed after December 31, 2010, has a surviving spouse and was a citizen or resident of the United States at the time of death. If the executor was not otherwise required to file an estate tax return (based on the value of the gross estate and adjusted taxable gifts) nor did they file an estate tax return within the prescribed timeframe, they are now able to file an estate tax return to make a portability election on behalf of the estate on or before the fifth anniversary of the death of the decedent.

The expanded relief is effective as of July 8, 2022 and is available now for estates that had missed the two-year window but are still within five years of the decedent's date of death.

### Contact Us

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