

How Portability Can Help Couples Reduce Estate Taxes

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Key Takeaways

- Portability is a federal estate planning concept that allows a surviving spouse to inherit (or “port”) any of their deceased spouse’s unused estate tax exemption amount and add it to their own exclusion amount for future use.
- Electing portability helps the surviving spouse potentially reduce or eliminate federal estate taxes upon their death.
- Portability does not happen automatically. Portability must be elected by filing an estate tax return (even if no estate tax is due) within five years of the first spouse’s death.

Overview

Federal estate and gift tax law allows each person to pass a certain amount of assets to their heirs – during their lifetime or at death – free of federal estate and gift taxes (up to \$13.61 million per person in 2024). Assets above the lifetime exemption amount that pass to heirs are subject to a 40 percent tax.

The lifetime exemption amount is important for any high-net worth individual to keep in mind, but it’s especially important for married couples, because of the concept of portability. Portability allows couples to combine their exemption amounts. When one spouse dies, the surviving spouse can use their own exemption amount plus any unused exemption amount from their deceased spouse to help reduce future estate taxes.

If portability is elected, it can provide estate planning flexibility, but it must be elected – it does not happen automatically. The surviving spouse (or the executor of the deceased spouse’s estate) must take the time and incur the associated accounting costs to file an estate tax return, even if no estate taxes are due, in order to elect portability.

What is portability?

Portability is a federal estate tax election that allows the unused exclusion amount (if any) of the first spouse to die to transfer to the surviving spouse. This helps to ensure none of the deceased spouse’s unused exemption (DSUE) amount is wasted. It gives spouses flexibility in planning for estate taxes by allowing the full, combined exemption amount to be utilized, even if the couple’s estate plan did not do so through other estate tax planning strategies.

Typically, if the estate of the first spouse to die is below the exemption amount (\$13.61 million in 2024) and/or if

they give a large portion of their estate to their spouse, they will not use all or perhaps any of their exemption amount. This is because transfers to spouses are estate tax free under the marital deduction, which allows unlimited transfers of assets between spouses during life or at death. This means an individual who gives their entire estate to their surviving spouse would have no estate tax liability upon their death. However, the assets transferred to the surviving spouse become part of their taxable estate, which could be subject to estate taxes upon their death. This is where portability comes in. By electing portability, the surviving spouse can increase their ability to reduce or eliminate estate taxes.

It is important to note that, barring congressional action, the current lifetime estate and gift exemption, which is the highest it's ever been, will “[sunset](#)” on Jan 1, 2026, and essentially be cut in half. Therefore, those with estates of \$1 million or more whose spouse died within the last five years should consider electing portability now. Because once you elect portability, it's yours no matter what happens to the lifetime exemption amounts in the future.

Why is portability important?

Portability safeguards the marital estate from federal estate taxes, because it ensures no exemption amount goes unused. For some married couples, failing to elect portability after the first spouse dies effectively reduces their exemption amount.

Consider this hypothetical example: Carl and Maggie are both retirees, who are recently married, and do not have any children together. Carl has a child from a prior marriage. Carl dies in 2024 when the lifetime gift/estate tax exemption is \$13.61 million per individual. Carl's will transfers \$3.61 million of his estate to his child and the rest to Maggie. Assuming no prior lifetime taxable gifts by Carl or Maggie, Carl's executor makes a timely portability election, which transfers the \$10 million DSUE amount (\$13.61 million - \$3.61 million) to Maggie, which increases her lifetime exemption amount to \$23.61 million (\$13.61 million + \$10 million), in 2024.

The ported exemption added to Maggie's current lifetime estate tax exemption at the time of her death could potentially eliminate, or significantly reduce, her estate's federal estate tax liability.

As seen from the example, even when there is no estate tax due upon the death of the first spouse, making a timely portability election can be essential to preserving planning flexibility for married couples who may face potential estate tax exposure in the future.

How to make a portability election

A portability election is not automatic. It requires the timely filing of an U.S. Estate, Gift, and Generation-Skipping Return (Form 706), even if there is no federal estate tax due. Typically, an estate has nine months from the decedent's date of death to file a Form 706, when there is a filing requirement. The government allows an additional six-month extension, which brings the maximum filing period to 15 months.

However, the IRS allows executors, who were not required to file an estate tax return, to submit a Form 706 to elect portability within five years from the decedent's date of death.¹ To elect portability under this procedure, the executor of the estate must submit a complete Form 706 with a statement on the top of the form that reads, “Filed Pursuant to Rev. Proc 2022-32 to elect portability under Sec. 2010(c)(5)(A).”

Bottom line

Portability is a tool that gives married couples with estate tax concerns flexibility in planning for potential federal estate tax exposure. However, because portability election is not automatic, a complete estate tax return must be filed within five years of the date of death of the first spouse.

Because of the complexity and regular changes to this area of law, we recommend speaking with a tax or legal advisor who can better help determine whether, and how, to properly elect portability.

Endnotes

1. “See [IRS Revenue Procedure 2022-32](#).”

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As Director of Estate, Trust, and High-Net-Worth Tax for the Schwab Center for Financial Research, Austin provides analysis and insights on topics including complex estate, gift and trust planning, advanced charitable strategies, business succession, and executive compensation.

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