

What is the Portability of Estate Tax Exemption?

Presented by LifeTime Asset & Tax Management

Did your spouse pass away within the last five years? If so, you may be able to file for an additional tax benefit, called "portability." The portability of the estate tax exemption refers to the ability of a surviving spouse to use any remaining portion of their deceased spouse's unused estate tax exemption. This concept was introduced into the U.S. federal tax code with the passage of the American Taxpayer Relief Act of 2012 (ATRA) and is commonly known as "portability."

This means if your spouse died in 2022, up to \$12.06 million in estate tax exemption can be transferred to the surviving spouse, adding to your total estate tax exemption. For the surviving spouse to take advantage of the benefits of portability, he or she is required to timely file an estate tax return (Form 706). For a variety of reasons, many do not file and lose their ability to elect portability, but later come to regret it.

When the Act was first enacted, the surviving spouse had to file within nine (9) months of the date of death plus any extensions. Because of an abundance of requests for relief from this rule, in 2017, the IRS issued a revision extending that timeline to two years. After still receiving many requests for the portability exemption after the two-year period had expired, the IRS has now determined to extend the automatic extension to five years from the date of death with Rev. Proc. 2022-32.

Given the potential upcoming reduction of the estate tax exemption in 2026, if you have a spouse that died within the last five years and did not file for portability, you should re-consider whether filing makes sense in your situation. If there is any doubt, filing is almost certainly the answer. If you are outside the new five-year rule, you may want to consider seeking a private letter ruling from the IRS allowing you to file late. In a period of uncertainty, the best strategy is always to have as many tools at your disposal as possible.

So, What Do I Do Now to Use This?

Estate and gift tax laws can be complex and can change over time due to legislative updates. For the most accurate and up-to-date information on estate tax exemptions and portability, it's recommended to consult with a qualified tax professional or refer to the latest IRS publications and guidelines.

We can help! Reach out to LifeTime Tax Management for guidance on how to take advantage of this little known tax exemption.



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