

# Estate Tax Portability Election: Simplified



ARTICLE 07.26.17 DEAN DORTON

Effective June 9, 2017, [Revenue Procedure 2017-34](#) provides a simplified method whereby **certain estates can obtain an extension of time to make an estate tax portability election**. The simplified method is only available to estates that are not required to file an estate tax return based on the value of the gross assets in the estate.

## History

Each individual is permitted a lifetime exemption (currently \$5,490,000) from estate and gift taxes. At death, any unused exemption can be transferred to one's surviving spouse to be added to the spouse's own exemption. Simply put, this portability election allows a married couple to transfer nearly \$11 million of assets without being subject to estate or gift taxes.

In addition to computing the amount of a decedent's unused exemption available, the basic requirement for the portability election is that an estate tax return be filed within the time prescribed by law (including extensions). Estate tax returns are typically due nine months after the date of death and estates may obtain an automatic six-month extension. In order to elect portability, estate tax returns must be filed by estates that are not otherwise required to file based on the value of the gross assets in the estate.

Since December 31, 2014, the IRS has issued numerous letter rulings granting extensions of time to elect portability in situations where the decedent's estate was not otherwise required to file an estate tax return. These requests have placed a significant burden on the IRS; therefore, the simplified method was created to ease this strain.

## Requirements

In order for the simplified method to apply, the estate needs to meet the following requirements:

- Decedent was a U.S. citizen or resident who died after December 31, 2010
- The estate was not required to file an estate tax return based on the value of the gross estate
- The estate did not file an estate tax return within the time prescribed

If these conditions are met, the estate will now have until *either* **January 2, 2018** or **two years from the decedent's date of death** (whichever occurs later) to file an estate tax return and elect portability.

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