

TAX ALERT

IRS PROVIDES SIMPLIFIED METHOD TO CURE LATE OR MISSED PORTABILITY ELECTION

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The Internal Revenue Service recently issued Rev. Proc. 2017-34 that provides a simplified method for certain estates to obtain an extension of time to make a “portability” election. The portability election, made by the executor of a decedent’s estate, enables the decedent to transfer the decedent’s unused exclusion amount (the “DSUE”) to the decedent’s surviving spouse.

Since 2011, the executor of a decedent’s estate has been able to elect to transfer the unused portion of a decedent’s lifetime exclusion against gift and estate tax to the decedent’s surviving spouse. This election has served to simplify estate planning for many individuals. Unfortunately, many executors have failed to properly understand the election requirements and, as such, have failed to properly and timely execute the portability election.

Rev Proc. 2014-18, issued in February 2014, provided a simplified method for obtaining an extension of time to make the portability election that was available to estates of decedents dying after December 31, 2010 if the estate was not otherwise required to file an estate tax return and the decedent was survived by a spouse. However, this simplified method was only available until December 31, 2014. After that date, the only cure for the executor’s failure to timely elect portability has been to request a private letter ruling, which is often a time consuming and expensive proposition. In response to a substantial number of requests for “portability” private letter rulings and to reduce the burden on the Internal Revenue Service caused by these requests, the Internal Revenue Service issued Rev Proc 2017-34 that provides certain estates a simplified method for obtaining additional time to elect portability of a DSUE.

Under the simplified method outlined in Rev. Proc. 2017-34, the executor of an estate that is otherwise not required to file a federal estate tax return is allowed to elect portability on a late-filed estate return by filing a complete and properly prepared estate tax return and indicating at the top of Form 706 that the return is “FILED PURSUANT TO REV. PROC. 2017-34 TO ELECT PORTABILITY UNDER Section 2010(c)(5)(A).” The executor is no longer required to request a private letter ruling and does not have to remit the private letter ruling user fee. This simplified method is available for estates until the later of 1) January 2, 2018 or 2) the second anniversary of the decedent’s death. Executors wishing to make a late portability election should file a federal estate tax return to elect portability within these deadlines.

Executors that fail to elect portability within the time limits of the simplified method, or those that had an estate tax return filing requirement, may still be eligible for relief by requesting a private letter ruling.

The Internal Revenue Service recently provided a simplified method for certain estates to obtain an extension of time to make a “portability” election. Executors that have previously failed to timely elect portability may correct their error under the simplified method until the later of January 2, 2018 or the second anniversary of the decedent’s death.

Please contact your Mazars USA tax professional if you have further questions or if you require assistance with a late filed portability election.

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