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ESTATES SHOULD TAKE ADVANTAGE OF THE NEW IRS PORTABILITY ELECTION LAW

As many of you are well aware by now, the Federal Estate Tax Exemption, valid through the end of 2020 is \$11.58 million dollars per person and \$23.16 million dollars per couple.

In the past, upon the passing of the first spouse, the exemption for that person would apply and if there was a balance left over, it would disappear. Then the second to die would utilize their own exemption amount for their estate.

However, the IRS issued Notice 2011-82 to alert executors of the estates of decedents dying after Dec. 31, 2010, of the need to file a Form 706, (United States Estate (and Generation Skipping Transfer) Tax Return) This portability election allows the estate to pass along their unused estate & gift tax exclusion amount to their surviving spouse. For estate planners, this provision is a welcome addition to their arsenal of tax saving mechanisms because the new portability law can often eliminate the need for spouses to re-title property and create trusts solely to take full advantage of each spouse's exclusion amount.

In order to qualify for the election, there are specific rules required by the IRS. These regulations are contained within notice 2011-82. Specifically, Form 706 must be filed to elect a portability exclusion, which allows the decedent's surviving spouse to take advantage of the deceased spouse's unused exclusion amount under the Code. Failure to do so will eliminate your ability to take advantage of the election.

Of most importance, to make the election, the executor must file a Form 706 for the decedent's estate, even if the executor is not otherwise obligated to file a Form 706. Further, a portability election can be made only on a Form 706 timely filed by the estate of a decedent dying after Dec. 31, 2010. By timely filing a properly prepared and complete Form 706, an estate will be considered to have made the portability election without the need to make an affirmative statement, check a box or otherwise affirmatively elect on the Form 706.

It may seem confusing, but the benefit of this allowance is well worth the effort. The tax form is actually not that complicated and it's a form that is standard when administering an estate. If you have been appointed as an executor or administrator of an estate, you should definitely pursue this option. This is true even if you assume that the surviving spouse's estate will never exceed the current exclusion amount. One never knows what the end result of a surviving spouse's

estate will gross in the years ahead and the estate tax exclusion is always subject to change.

Anthony J. Medico, Esq., has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to info@medicoandassociates.com or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at www.medicoandassociates.com, where you can also download our free Estate Planning Survival Guide. Enjoy.

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