



MEDICO & ASSOCIATES, LLC

ATTORNEY AT LAW

75 Holly Hill Lane, Suite 100 Greenwich CT 06830

Phone: 1 203 661 8151 Fax: 1 203 661-0357

www.MedicoandAssociates.com

ESTATES SHOULD TAKE ADVANTAGE OF THE NEW IRS PORTABILITY ELECTION LAW

As many of you are well aware by now, the Federal government enacted an interim estate tax exemption, valid through the end of 2012 at an amount of \$5 million dollars per person and \$10 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.

Recently 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 spouses estate will never exceed the current exclusion amount. One never knows what the end result of a surviving spouses estate will gross in the years ahead and the estate tax



MEDICO & ASSOCIATES, LLC

ATTORNEY AT LAW

75 Holly Hill Lane, Suite 100 Greenwich CT 06830

Phone: 1 203 661 8151 Fax: 1 203 661-0357

www.MedicoandAssociates.com

exclusion is always subject to change.

Anthony J. Medico, Esq., has practiced law for over 22 years. To ask a question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.