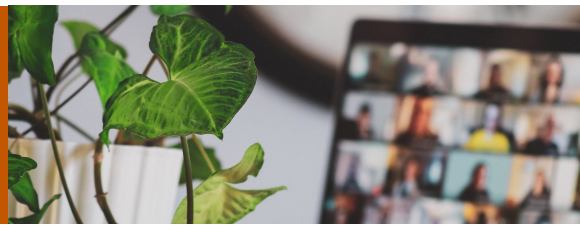
Estate Tax Portability



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When a spouse dies, the family has many personal and practical matters to handle. Estate taxes may not be an immediate concern, especially if the deceased spouse's estate is below the federal filing threshold. Even so, the family should consider whether to file a federal estate-tax return, Form 706.

Filing Form 706 may allow the surviving spouse to use the deceased spouse's unused federal estate-tax exemption. This is known as **portability**.

How the Estate and Gift Tax Works

The federal gift and estate tax applies to certain transfers made during life or at death. Under the 2026 rules described here, each person can transfer $15 million during life and at death without paying federal gift or estate tax.

A married couple generally has two exemptions—one for each spouse. Portability allows the first spouse to transfer any unused exemption to the surviving spouse. As a result, the surviving spouse may have up to $30 million of exemption available at the surviving spouse's death.

The amount transferred is called the **deceased spousal unused exclusion amount**, or **DSUE**.

Why Is Form 706 Important?

A timely and complete Form 706 is required to elect portability, even when no federal estate tax is owed. Filing the return preserves the deceased spouse's unused exemption for the surviving spouse's future use.

The DSUE may become valuable if the surviving spouse's assets increase because of:

- Investment, real estate, or business appreciation;
- Inheritances or other transfers;
- Life-insurance proceeds;
- Lifetime gifts; or
- Changes in the surviving spouse's financial circumstances.

If the portability election is not made on time, the deceased spouse's unused exemption generally is lost.

When Is Form 706 Due?

Form 706 is due nine months after the date of death. The executor or personal representative may request a six-month extension by filing Form 4768.

In some cases, an estate that was not otherwise required to file Form 706 may have up to five years after the date of death to file the return and elect portability. This extended procedure does not apply in every situation, particularly when the estate was already required to file a return. The filing requirements should therefore be reviewed promptly.

Who Should Consider Filing?

For higher-net-worth couples, filing Form 706 at the first spouse's death is often advisable because the surviving spouse's

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assets may later become subject to estate tax.

Families with more modest assets should also consider filing. The decision may depend on:

- The couple's combined net worth;
- The spouses' life expectancies;
- The possibility of future inheritances or asset growth;
- Future lifetime gifts; and
- The possibility that the federal exemption amount may decrease.

Even if estate tax appears unlikely today, preserving the DSUE may provide valuable protection in the future.

Massachusetts Estate Tax Considerations

Massachusetts has a much more modest estate tax exemption amount of only $2 million per individual, meaning many Massachusetts residents who owe no federal estate tax may face the possibility of owing Massachusetts estate taxes. And unlike the federal system, Massachusetts does not have portability. Good estate planning in Massachusetts can nonetheless take advantage of each spouse's $2 million exemption, generally through the establishment of lifetime revocable trusts with planning for family and marital shares of those trusts after death.

We extend our sincere condolences to families dealing with the loss of a loved one and we understand that tax filings can be difficult to address while a family is grieving. However, the deadline for electing portability may arrive sooner than expected.

In some cases, filing Form 706—even when no federal estate tax is due—can preserve a valuable tax benefit for the surviving spouse. Our firm can help determine whether a return should be filed, calculate the potential DSUE, and evaluate the applicable filing requirements.

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