Reduce Estate Taxes with the Portability Provision

A Valuable Estate Planning Tool For Married Couples

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IF YOU HAVE A LARGE ESTATE, gifting assets during your lifetime is a strategic way to help reduce estate taxes and maximize the inheritance your beneficiaries will one day receive. Gifting during your lifetime also gives you control of how your assets are distributed and provides you the opportunity to see your beneficiaries put your gift to use. If you are also married, you can significantly increase your potential gifting amount through the portability provision, which is an extremely valuable tool available for married couples to make the most of their gifts.

THE BASICS OF ESTATE AND GIFT TAX EXEMPTIONS

For 2025, you can gift as many individuals as you'd like up to $19,000 each in a single year without creating a taxable event ($38,000 for spouses splitting gifts). This is an increase from $18,000 in 2024. The recipient of the gift typically owes no taxes and does not have to report the gift to the IRS.

Once your gift exceeds $19,000 to any person during the year, you begin to dip into your lifetime gift and estate tax exemption, also known as the federal unified tax credit. As of 2025, individuals can transfer up to $13.99 million tax-free over their lifetime, and couples can transfer up to $27.98 million. Transfers beyond these limits are taxed at rates as high as 40%.

HOW PORTABILITY WORKS

Portability is a provision in the federal estate and gift tax laws that allows a surviving spouse to inherit the unused portion of their "deceased spouse's unused exclusion amount" (DSUE), potentially doubling the assets that can pass tax-free to heirs. For instance, if one spouse dies, leaving an estate worth $5 million, the remaining exemption from their $13.99 million limit, or $8.99 million, can be "ported" to the surviving spouse's exemption. The surviving spouse could then use this $8.99 million in addition to their own $13.99 million exemption, allowing up to $29.83 million in assets to pass tax-free to their heirs.

MAKING THE PORTABILITY ELECTION

To take advantage of portability, the executor of the deceased spouse's estate must file an estate tax return (Form 706) and elect portability within nine months of the spouse's death. This step is required even if the deceased spouse's estate does not owe federal estate tax, and it preserves the unused exemption for future use by the surviving spouse. Executors may request a six-month extension if needed, but failing to file on time forfeits the portability benefit.

BENEFITS AND LIMITATIONS OF PORTABILITY

Portability can be a significant advantage for married couples seeking to minimize estate taxes, especially when one spouse's estate is worth considerably less than their exemption. By transferring the DSUE, a surviving spouse can shelter more assets from taxation at their death, which is especially beneficial for high-net-worth couples whose assets may appreciate in value over time. By enabling spouses to pass on more of their combined assets without incurring federal estate taxes, the portability provision helps high-net-worth families preserve wealth across generations.

However, portability does have some limitations. Notably, portability applies

only to federal estate taxes; it does not extend to state estate taxes, which vary widely. Additionally, portability does not apply to the generation-skipping transfer (GST) tax exemption, which requires a separate allocation and strategy for families aiming to transfer wealth to grandchildren or future generations.

It's important to be aware of two important details. First, that the federal unified tax credit applies to the total of all gifting strategies employed above the yearly limit; and second, the upcoming reduction of the current exemption amount. The $13.99 million exception as it stands right now is temporary and only applies through the end of 2025. Unless Congress makes the change permanent, this current exemption level will "sunset" on January 1, 2026. At that time, the exemptions will revert to 2017 levels, adjusted for inflation, which will be about half of what they are now. Estimates show that the new limits will be around $7 million for individuals and $14 million for married couples.

CONSIDERING PORTABILITY IN ESTATE PLANNING

Portability can be an impactful tool in estate planning for high-net-worth couples. Navigating portability requires careful planning and consideration of the many nuances involved. Working with a trusted wealth advisor can help couples effectively incorporate portability into their estate plan before the provision expires.

Is there a wealth planning topic you would like to learn more about? Email us at wagner@wwmadvisors.com, and you may see your questions answered here.

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