

WINDOW TO MAKE PORTABILITY ELECTION IS EXTENDED TO FIVE YEARS

BY SO SUM LEE, CPA

Since lifetime gift exemption has drastically increased by the Tax Cuts and Jobs Act (TCJA), which went into effect in 2018, considerably fewer people are subject to estate tax filing.

According to the TCJA, for 2022, decedents with an estate valued less than \$12,060,000 are not required to file an estate tax return. However, to elect portability, an estate tax return will have to be filed within 15 months (including extensions) from the date of death.

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WHAT IS PORTABILITY?

For a married couple, if the taxable estate is below lifetime estate and gift tax exclusion, the unused exclusion and unified credit can be passed on to the surviving spouse. The rule that allows this unused unified credit of the deceased spouse to be carried over and used by the estate of the surviving spouse is called *Deceased Spouse Unused Election (DSUE)*, commonly known as **portability**.

For example, a decedent who passed away in 2022 with an estate of \$5,000,000 will leave \$7,060,000 of unused exemption. With portability election, the remaining unused exemption can be passed on to a surviving spouse. Hence the surviving spouse will have an additional \$7,060,000 of exemption on top of what the surviving spouse is entitled to at the time of his or her passing.

WHY IS HAVING PORTABILITY IMPORTANT?

When the provisions in TCJA sunset in 2025, the lifetime gift exemption for 2026 will drop back down to \$5 million under old laws with inflation adjustment, which is expected to result in an amount of about \$6.2 million. For estates in the \$6 million range, it is recommended to file an estate tax return for portability election, so that the surviving spouse can benefit from the unused unified credit.

Continuing with the example above, assuming the surviving spouse passes away in 2026 with an estate of \$8 million; without portability, he or she will have a taxable estate of \$1,800,000 assuming the lifetime gift exemption in 2026 is \$6.2 million. However, with portability, the entire estate is nontaxable since the surviving spouse's estate is entitled to his or her own lifetime gift exemption of \$6.2 million plus the carryover of \$7 million.

TIME TO FILE FOR PORTABILITY IS NOW EXTENDED TO FIVE YEARS

In 2017, the IRS extended the window to file for portability election to two years. In July 2022, the IRS issued a revenue procedure (Rev. Proc. 2022-32), which extended the filing of estate tax returns to elect portability to five years from the date of death of the decedent.

Even though we now have five years from the date of death to backfile estate tax returns to make portability election, procrastinating is never a good idea. Getting all the information ready to file a complete estate tax return is a time-consuming process. Having to dig up old records for five years makes the process that much harder. Our [Estate & Gift, Trust and Probate](#) team at KROST can help you. Please [contact](#) us here at KROST if you have questions.



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We are offering a [free preview](#) of the planner for download. Schedule a call to assess your situation for access to the full book.

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About the Author

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So Sum Lee, CPA, is a Tax Principal at KROST. So Sum has over 20 years of experience in public accounting and has a wide range of experience in Taxation, as well as servicing high-net-worth clients. So Sum's area of expertise includes industries such as wholesale, real estate investments, and restaurants. [» Full Bio](#)