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## "Portability" and Your Estate Plan

"Have you heard about portability?" "What does it have to do with my estate plan?"

These are two questions we often hear from clients. "Portability" allows a widow or widower, in most cases, to add any unused estate tax "exemption" to his or her own estate tax exemption. The American Taxpayer Relief Tax Act of 2012 made this concept of portability between spouses permanent... well, at least as permanent as anything can be in the tax law. Fortunately, it doesn't come with a built-in expiration date, like so many tax benefits do.

The exemption amount for 2014 is now up to \$5.34 million apiece (\$10.68 million for a married couple). It is automatically adjusted for inflation each year. According to recent estimates by economists, the individual exemption amount is projected to grow to \$6.5 million apiece in five years and \$8.95 million apiece in 20 years.

For the vast majority of clients, this means that you may be able to greatly simplify your wills and estate plan.

Standard estate planning in pre-portability times (when the exemption amounts were much lower) required most clients to use a two, or even three, trust approach to capture the maximum available federal and state estate tax exemptions. With larger exemption amounts and portability, in many cases, your estate plan can now be driven primarily by your desires regarding disposition of your property, free of the old tax planning constraints. With the advent of portability, this may be the opportune time to sit down with us and review your estate plans to see if there might be some opportunity for simplification. For example, it may be possible to either eliminate altogether or postpone the use of any trusts until after the death of the surviving spouse.

- Of course, there are still valid asset protection and other important considerations for the use of trusts, even in smaller estates.
- And for those in the mid-range, say with estates between roughly \$5 million and \$10 million, often relying on portability can be effective for simplifying administration of your bequests.
- For estates \$10 million and up, thoughtful consideration must be given as to how and when to rely on portability.

One hallmark of our planning recommendations is flexibility. We constantly look for ways to defer some of these decisions, where appropriate, until the first death. This might involve holding the trust structure in reserve and only invoking it if needed for tax or other reasons. This way, with more certainty at the death of the first spouse about the makeup of the estate, its value, and the situation of the heirs and beneficiaries, the opportunity can be created for more effective decisions.

We would be pleased to meet with you to review your current estate plans and help identify opportunities for:

- Simplification
- Asset protection
- Tax savings

For many clients, portability will afford the opportunity for greater simplification of your estate plan.

Should you have any questions about this or any other estate planning related issue, please contact [Jim Tramonte](#) or any member of our [Trusts, Estates & Wealth Management Practice Group](#).

*The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.*

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