

Proposed and Temporary Regulations Addressing Portability

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[Deborah DiNardo](#)
[Lawrence D. Hunt](#)

In June, the Internal Revenue Service issued proposed regulations and temporary regulations addressing the portability of a deceased spouse's unused federal estate tax exemption. These regulations are "taxpayer friendly" and clarify several items which have been distressing fiduciaries and tax preparers.

Regulation highlights:

- Estates which are below the threshold required to file a federal estate tax return may still elect portability by filing Form 706. To help keep estate administration costs down, taxpayers may use "estimates".
- If no executor or administrator is required to be appointed for the estate, portability may be elected by the "constructive" executor under Code Section 2203, such as a trustee or the person in possession of the decedent's property.
- The deceased spousal unused exemption amount (DSUEA) which may be carried over is redefined and expanded to include multiple spouses' DSUEAs.
- When gift tax has been paid by the first spouse to die, there is no "clawback" in the estate of the second spouse to die.
- "Ordering rules" have been provided which address which spouse's exemption amount is used first when the surviving spouse makes lifetime gifts (when surviving spouse makes a gift, the surviving spouse uses the deceased spouse's DSUEA first, not the surviving spouse's exemption).

Hearings on the regulations are planned for this autumn. Stay tuned!