

## Co-Chair



Joseph L. Goldman

## Co-Chair



Naomi Becker Collier

## Attorneys



Monica Babula



Victoria Friedrich



Frank Huttle III

# Trusts & Estates and Elder Law Update

## IRS Extends Time to File Estate Tax Return for Portability

On July 8, 2022, the IRS issued Revenue Procedure 2022-32 (“Rev. Proc. 22-32”) which extends the time a surviving spouse has to elect portability of a deceased spouse’s unused exemption (“DSUE”), as it relates to federal estate taxes, up to five (5) years after the death of the first spouse.

Portability was first enacted by Congress in 2010 in the Tax Relief Act. It allows spouses to combine their individual estate tax exemptions, provided that the representative of the estate of the first spouse to die makes a timely portability election. The election is made by filing a federal estate tax return, known as Form 706, within nine (9) months of the date of death of the first deceased spouse. The current federal estate tax exemption for 2022 is \$12.06 million per person, or up to \$24.12M per couple. For example, if, upon the death of the first spouse, only \$5 million of his or her exemption is used, the remaining \$7.06 Million DSUE is available to the surviving spouse, if a timely portability election is made. Once elected, the surviving spouse will have his or her own estate tax exemption of \$12.06 million plus the unused \$7.06 million exemption from the first spouse’s estate, for a total exemption of \$19.12 million which can pass estate tax free on the death of the surviving spouse (assuming no taxable gifts were made during his or her lifetime).

Many people missed the nine (9) month filing deadline and appealed to the IRS requesting what is called a “letter ruling” whereby the IRS could extend the deadline for the surviving spouse to timely file for portability. The letter rulings became so onerous on the IRS’ resources that in 2017 the IRS issued Rev. Proc. 2017-34 which provided a simplified method to obtain a two-year extension of the time to file for portability. In 2022 Rev. Proc. 22-32 was created to further ease the burden on the IRS which “continued to issue numerous letter rulings...granting an extension of time to elect portability under §2010(c)(5)(A)” since the publication of Rev. Proc. 2017-34.

Rev. Proc. 22-32 applies to estates of decedents who meet the following criteria:

- The decedent was a U.S. citizen or resident;
- The decedent died after Dec. 31, 2010, survived by a spouse, and
- Was not otherwise required to file an estate tax return.

Rev. Proc. 22-32 has also updated the simplified method set forth in Rev. Proc. 2017-34. Now, in order to receive the extension of time to make the portability election, the estate representative must file a complete and properly prepared IRS Form 706 on or before the fifth (5<sup>th</sup>) anniversary of the decedent’s death and the representative must state at the top of Form 706 that the return is “FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)

(A).”



Frank P. Marino



Louis Pashman



James R. Strull



Jane Wolk

If you or a loved one would like to learn more about filing for portability, please contact one of the knowledgeable Trust and Estate attorneys at Pashman Stein Walder Hayden today.

[Contact Us](#)

Pashman Stein Walder Hayden, P.C. | Court Plaza South, East Wing, 21 Main Street, Suite 200,  
Hackensack, NJ 07601-7054

[Unsubscribe cmartins@pashmanstein.com](mailto:cmartins@pashmanstein.com)

[Update Profile](#) | [Constant Contact Data Notice](#)

Sent by [cmartins@pashmanstein.com](mailto:cmartins@pashmanstein.com) powered by



Try email marketing for free today!