



July 27, 2022

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Ms. Melissa C. Liquerman
Chief, Branch 4 (Estate & Gift)
Office of Chief Counsel
Passthroughs and Special Industries
Internal Revenue Service
Washington, DC 20044

RE: [Revenue Procedure 2022-32](#) Providing an Updated Simplified Method for Obtaining an Extension of Time under Treas. Reg. § 301.9100-3 to Make a Portability Election for Estate and Gift Tax Purposes

Dear Ms. Batchelder, Mr. Paul, and Ms. Liquerman:

On behalf of the American Institute of CPAs (AICPA), we are writing to express our appreciation that the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) issued Revenue Procedure (Rev. Proc.) 2022-32, dated July 8, 2022, providing an updated simplified method for obtaining an extension of time (automatically up to five years from the date of the decedent’s death) under Treas. Reg.¹ § 301.9100-3 (“9100 relief”) to make a section 2010(c)(5)(A) portability election of the deceased spousal unused exclusion (DSUE) amount for estate and gift tax purposes.

The portability election allows a surviving spouse to elect to apply a decedent’s unused exemption amount to the surviving spouse’s own transfers during life and at death. It must be filed with the decedent’s estate tax return, which is due nine months after the decedent’s date of death, even if no estate tax return is otherwise due. Section 9100 relief is available for missed or late elections.

Previously, Rev. Proc. 2017-34, issued June 26, 2017, provided an automatic extension for up to two years from date of death to use the simplified method if certain requirements were met. The necessary relief is for estates not otherwise required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The increased exemption amounts had made many smaller estates unaware of the necessity to make the election by filing Form 706.

We are pleased that IRS updated and superseded Rev. Proc. 2017-34 to provide expanded taxpayer relief for late and missed portability elections that will eliminate the need for a significant number

¹ Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

The Honorable Lily Batchelder
Mr. William M. Paul
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July 27, 2022
Page 2 of 3

of private letter rulings (PLRs). Treasury and IRS have recognized and responded to taxpayer and practitioner cost and time burdens associated with submitting a PLR to request 9100 relief for many missed or late portability elections beyond the two years of decedent's date of death in Rev. Proc. 2017-32 (and within five years of decedent's date of death).

The Rev. Proc. 2022-32 simplified method will save much time and cost for many taxpayers who continue to miss the deadline for making the portability election. They will now avoid having to request a PLR, paying a user fee, and waiting for IRS to consider and issue a PLR to allow a late portability election. Rev. Proc. 2022-32 will help many taxpayers who are not required to file an estate tax return because the value of the gross estate and adjusted taxable gifts is under the section 6018(a) filing threshold and they do not realize they should consider electing portability until after two years (the prior Rev. Proc. 2017-34 deadline) but within five years of the decedent's date of death. In addition to helping taxpayers and practitioners, Rev. Proc. 2022-32 will also save Treasury and IRS from utilizing their limited resources on considering and issuing these PLRs.

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If you have any questions, please contact Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or Irene.C.Estrada@pwc.com; Eileen Sherr, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Ms. Catherine Hughes, Estate and Gift Tax Attorney-Advisor, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury
Ms. Holly Porter, Associate Chief Counsel, Passthrough & Special Industries, Internal Revenue Service

The Honorable Lily Batchelder
Mr. William M. Paul
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July 27, 2022
Page 3 of 3

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