



American Institute of CPAs
1455 Pennsylvania Avenue, NW
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March 19, 2015

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
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Washington, DC 20224

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Thomas West
Tax Legislative Counsel
Department of the Treasury
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Washington, DC 20220

Mr. Curtis G. Wilson
Associate Chief Counsel for
Passthroughs and Special Industries
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Comments on [Revenue Procedure 2014-18](#) and [REG-141832-11](#) and [TD 9593](#)
regarding Guidance on Portability, Notice of Proposed Rulemaking (6/18/2012)

Dear Messrs. Koskinen, Wilkins, West, and Wilson:

The American Institute of Certified Public Accountants (AICPA) thanks the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS or “Service”) for issuing Revenue Procedure 2014-18 on January 27, 2014, and the above mentioned proposed and temporary regulations published on June 18, 2012, regarding guidance on the portability of the deceased spousal unused exclusion (DSUE) amount. As the AICPA stated in [comments](#) on the proposed regulations submitted on September 14, 2012, the guidance generally provides a reasonable approach to interpreting, implementing, and complying with the portability rules. The AICPA appreciated the revenue procedure as it provided relief that the AICPA had requested, including:

- IRS providing needed relief to estates below the filing threshold that were not aware of the filing requirement in order to make the portability election;
- IRS providing additional relief and guidance for decedents who were in a same-sex marriage and did not file an estate tax return to claim portability; and
- IRS issuing closing letters to estates electing portability.

The AICPA now requests that Treasury and IRS:

- Provide permanent relief (15 months) to estates not otherwise required to file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*;

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- Provide a short Form 706-EZ to make the portability election; and
- Allow the surviving spouse to file for portability.

The AICPA is the world's largest member association representing the accounting profession, with more than 400,000 members in 128 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized business, as well as America's largest businesses.

Background

In December of 2010, as part of the [Tax Relief, Unemployment, Reauthorization, and Job Creation Act of 2010](#), Congress amended Internal Revenue Code (IRC) section 2010(c) to allow the surviving spouse of a decedent who dies after December 31, 2010 (and before January 1, 2013) to utilize any unused estate tax exclusion of the decedent. This right is commonly referred to as "portability." The [American Taxpayer Relief Act of 2012](#), P.L. 112-240, enacted January 2, 2013, extended permanently the portability provision.

The 2012 proposed and temporary regulations provide guidance on the estate and gift tax applicable exclusion amount, in general, as well as on the applicable requirements for electing portability of the DSUE amount to the surviving spouse and on the applicable rules for the surviving spouse's use of this DSUE amount. The AICPA previously provided comments on the regulations for consideration in the drafting of the final regulations.

[Revenue Procedure 2014-18 \(hereafter Rev. Proc. 2014-18\)](#), issued on Jan. 27, 2014, provides an automatic extension (until the end of 2014) for certain estates that did not otherwise have a filing requirement to elect portability of the DSUE amount for the benefit of the surviving spouse. As the AICPA requested, the revenue procedure simplifies the process for 2011-2013 estates (whose assets did not meet the threshold for estate tax return filing) to file for portability and protects executors of estates who were unaware of the need to file an estate tax return to obtain portability.

Previously and for estates of decedents dying in 2014 and future years, the only method of relief available is for the estate to seek a private letter ruling from the IRS, requesting an extension of time to make the portability election. The relief in Rev. Proc. 2014-18 applies only to certain estates of decedents who died after Dec. 31, 2010, and before Jan. 1, 2014, including decedents in recognized same-sex marriages. Under the terms of Rev. Proc. 2014-18, the election was required to be made on an estate tax return filed by December 31, 2014.

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In addition, as the AICPA [requested](#) on October 30, 2013, Rev. Proc. 2014-18 provided additional guidance on the process for estates of decedents in a same-sex marriage to claim portability of the estate tax exemption if they were not required to, and did not previously, file [Form 706](#) because they were below the filing threshold. In addition, as the AICPA previously requested that the IRS issue closing letters to estates that elect portability, Rev. Proc. 2014-18 provides that such closing letters will be issued to estates who file under the revenue procedure.

General Comments

The AICPA recognizes the effort that was devoted by the IRS and Treasury officials to provide greater clarity for taxpayers and practitioners. The guidance is appreciated because it helps estates of decedents who were not otherwise required to file an estate tax return.

Specific Comments

IRS should Provide Permanent Relief to Estates Not Otherwise Required to File Form 706

The AICPA is concerned about estates not being able to take advantage of portability of the DSUE amount because the executors and practitioners are unaware of its provisions or the requirement to file a Form 706 in order to make the portability election. Treasury and the IRS recognized that executors of estates that are not otherwise required to file a Form 706 may have inadvertently missed the opportunity to take advantage of portability. Revenue Proc. 2014-18 provided relief for estates of individuals who died between January 1, 2011, and December 31, 2013, that were not required to file a Form 706 because the gross estate did not exceed \$5 million (indexed for inflation) filing threshold.

Notice 2012-21 allowed estates of decedents who died after December 31, 2010, and before July 1, 2011, a six-month extension of time to make the portability election if the estate was not otherwise required to file a Form 706. Those estates could make the portability election by filing Form 4768, *Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, and Form 706 within fifteen months after the individual's death.

The AICPA welcomes the relief provided by the Treasury and IRS through the issuance of Rev. Proc. 2014-18 for estates of decedents who died in 2011-2013. We believe, however, that the concerns prompting the issuance of Rev. Proc. 2014-18 are ongoing. Families of decedents with gross estates under the basic exclusion amount will not in all cases be familiar with the deadline for making the portability election. Many families have not begun addressing the administration of the estates of decedents who died in 2014 and would not have considered whether to file an estate tax return or extension.

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We recommend that Treasury and the IRS permanently provide the extension method provided in Notice 2012-21 to file Form 4768 and Form 706 within 15 months after the decedent's death for any estate that is not otherwise required to file a Form 706.

IRS should Provide a Short Form 706-EZ to Make the Portability Election

For many estates of decedents who died in 2011-2013 and who have or will have died in 2014 and future years, the sole reason for filing Form 706 is to take advantage of portability of the DSUE amount. In order to facilitate these filings in a cost-efficient manner, we recommend that the IRS develop and provide a Form 706-EZ. The sole purpose of this form would be for taxpayers to fulfill their responsibility of filing an estate tax return to elect portability and to detail the calculation of the DSUE amount. The AICPA would be pleased to assist the IRS in developing such a form.

IRS should Allow the Surviving Spouse to File for Portability

Under IRC section 2010(c)(5), only the executor of a decedent's estate is eligible to make a portability election. Many estates are not required to file a Form 706 because the gross estate is less than the exclusion amount. For small estates, the sole purpose for filing a Form 706 is to elect portability. In such cases, the only individual with a vested interest in filing an estate tax return may be the surviving spouse, who frequently is not the executor.

In such circumstances, we recommend that if the executor chooses not to file an estate tax return, the surviving spouse should have the option of filing the return in order to take advantage of portability. The personal representative may not want to incur the cost of filing a tax return on behalf of the estate. However, the surviving spouse may be willing to coordinate and finance the preparation of the estate tax return and should have this option.

* * * * *

We welcome the opportunity to discuss these comments or answer any questions that you may have. I can be reached at (801) 523-1051, or tlewis@sisna.com; or you may contact Eric L. Johnson, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (312) 486-4442 or ericljohnson@deloitte.com; or Eileen Sherr, AICPA Senior Technical Manager, at (202) 434-9256, or esherr@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, Tax Executive Committee

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cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of
Tax Policy, Department of the Treasury
Ms. Melissa Liquerman, Chief, Branch 4, Office of the Associate Chief Counsel for
Passthroughs and Special Industries, Internal Revenue Service
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