

IRS News Release

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New for 2011: Surviving Spouses to Benefit from Portability Election; Estate Tax Return Required to Make this Choice; For Some, Form 706 Due as Early as Oct. 3

IR-2011-97, Sept. 29, 2011

WASHINGTON — The Internal Revenue Service today reminded estates of married individuals dying after 2010 that they must file an estate tax return to pass along their unused estate & gift tax exclusion amount to their surviving spouse.

Available for the first time this year, the new portability election allows estates of married taxpayers to pass along the unused part of their exclusion amount, normally \$5 million in 2011, to their surviving spouse. Enacted last December, this provision eliminates the need for spouses to retitle property and create trusts solely to take full advantage of each spouse's exclusion amount.

The IRS expects that most estates of people who are married will want to make the portability election, including people who are not required to file an estate tax return for some other reason. The only way to make the election is by properly and timely filing an estate tax return on [Form 706](#). There are no special boxes to check or statements needed to make the election.

The first estate tax returns for estates eligible to make the portability election (because the date of death is after Dec. 31, 2010) are due as early as Monday, Oct. 3, 2011. This is because the estate tax return is due nine months after the date of death. Estates unable to meet this deadline can request an automatic six-month filing extension by filing [Form 4768](#). The IRS emphasized that estates of those who died before 2011 are not eligible to make this election.

The IRS plans to issue regulations providing further guidance on this election and welcomes public comment on a number of issues. There are three ways to submit comments:

- E-mail to: Notice.Comments@irs.counsel.treas.gov. Include "Notice 2011-82" in the subject line.
- Mail to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2011-82), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

- Hand deliver to: CC:PA:LPD:PR (Notice 2011-82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday.

The deadline is Oct. 31, 2011. Further details are in [Notice 2011-82](#), posted today on IRS.gov.