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Current Estate and Gift Tax Issues



5/25/2012

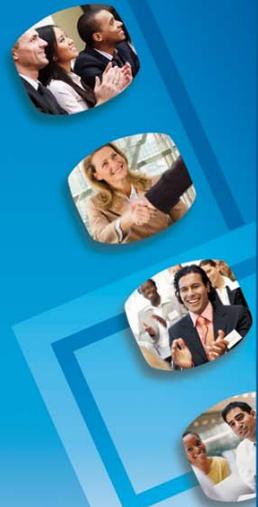


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Estate Tax Basic Exclusion and Maximum Tax Rate

<u>Year</u>	<u>Exclusion</u>	<u>Rate</u>
2010	\$5,000,000 (or unlimited)	35%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%





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Gift Tax Applicable Exclusion and Maximum Tax Rate

<u>Year</u>	<u>Exclusion</u>	<u>Rate</u>
2010	\$1,000,000	35%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%





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GST Applicable Exclusion and Maximum Tax Rate

<u>Year</u>	<u>Exclusion</u>	<u>Rate</u>
2010	\$5,000,000	0%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$1,000,000	55%





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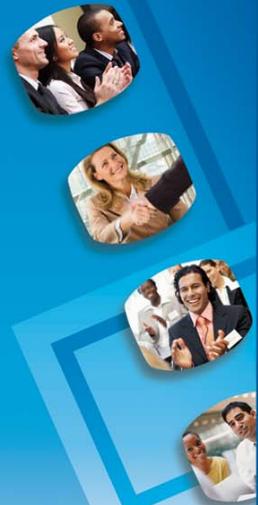
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Portability

“Applicable Exclusion Amount” is the sum of:

- Basic exclusion amount (\$5 million), and
- Deceased spousal unused exclusion amount (“DSUEA”)

Increases the applicable exclusion of electing surviving spouse by any unused exclusion of a predeceased spouse





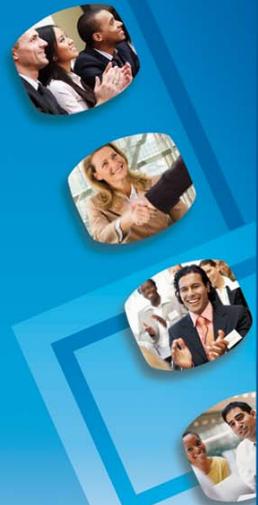
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Portability – Limitations Period

If the executor elects to increase the applicable exclusion amount, then the limitations period on the predeceased spouse's return will be opened

Limitations period is opened only for purposes of making a determination of the unused exclusion amount





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Electing Portability

Executor of the **first spouse** must elect portability on a timely filed Form 706 (including extensions)

Election is irrevocable

Effective for estates after Dec. 31, 2010

Notice 2011-82, Oct. 17, 2011





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Extension to Elect Portability

Notice 2012-21, March 5, 2012

Six-month extension to file Form 706
and elect portability

Form 4768 within 15 months of death

“Qualifying Estate”





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“Qualifying Estate” (Notice 2012-21)

The decedent is survived by a spouse
The decedent’s date of death is after
Dec. 31, 2010, and before July 1, 2011
The fair market value of the decedent’s
gross estate does not exceed
\$5,000,000





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Protective Claims

Rev. Proc. 2011-48, Oct. 17, 2011

Final regulations under IRC 2053

- Issued in 2009
- Amount deductible (for a claim or expense) limited to the amount actually paid

Protective claim – preserve the estate's right to a refund for future amounts paid





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Requirements for Protective Claims

Filed before expiration of limitations period

In writing

State each ground upon which a refund is claimed

State facts sufficient to apprise of the exact basis of the claim

Documentary evidence of authority of person filing the claim





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Forms for Protective Claims

Form 843, Claim for Refund

- “Protective claim for refund under Section 2053”

Form 706, Schedule PC

- Only available after 2012

A separate claim must be filed for each claim or expense for which a deduction may be claimed





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Tax Gap – Estate Tax

Tax gap allocable to estate taxes (billions):

	<u>2001</u>	<u>2006</u>
Nonfiling	\$2	\$3
Underreporting	\$4	\$2
Underpayment	\$2	\$2
Total	\$8	\$7





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Estate & Gift Program Nonfiler Projects

Internal nonfiler projects

Federal/state initiatives

IRS Whistleblower Office





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Post 2012 Issues

Exclusion of \$1 million

Top rate of 55%

Additional 5% surtax on certain large estates

State death tax credit/deduction

QFOBI deduction





What's New on IRS.gov

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Topic	Search Word(s)
Electronic newsletters (payroll providers, small businesses and tax professionals)	e-news subscribe
Multimedia center (audio, video and text)	multimedia
Social media (iTunes, podcasts, Twitter, widgets, YouTube and IRS2Go mobile app) *Follow IRS on Twitter @IRSTaxpros	social media
Video portal - Small business tax compliance priorities - Audit techniques guides - Referring tax avoidance schemes	video portal
Basic tools for tax professionals	basic tools
E-Services – Online tools for tax pros	eservice
Tax information for tax professionals Continuing education for tax professionals	information for tax professionals