



NAEPC
Journal
of Estate & Tax Planning

COLLABORATE + EDUCATE + CULTIVATE

[Click here to view Issue 40](#)

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2972

Date: 08-Jul-22

From: Steve Leimberg's Estate Planning Newsletter

Subject: [FLASH: Bruce Steiner on Rev. Proc. 2022-32 - IRS Extends Time to File Portability Return From 2 Years to 5 Years](#)

“In Revenue Procedure 2022-32, the Internal Revenue Service extended the time for filing an estate tax return to elect portability without a private letter ruling from two years after death to five years after death.”

Bruce Steiner provides members with timely commentary on [Revenue Procedure 2022-32](#).

Bruce D. Steiner, of the New York City law firm of **Kleinberg, Kaplan, Wolff & Cohen, P.C.**, and a member of the New York, New Jersey and Florida Bars, is a long time LISI commentator team member and frequent contributor to Estate Planning, Trusts & Estates and other major tax and estate planning publications. He is on the editorial advisory board of Trusts & Estates, a co-author of CCH's *Roth IRA Answer Book*, and a contributing author of Thomson Reuters' *Irrevocable Trusts*. He is a popular seminar presenter at continuing education seminars and for Estate Planning Councils throughout the country. He has served on the professional advisory boards of several major charitable organizations, and was named a New York Super Lawyer each year since 2010 and was selected for Best Lawyers of New York each year since 2018.

Bruce has been quoted in various publications including *Forbes*, the *New York Times*, the *Wall Street Journal*, the *Daily Tax Report*, *Investment News*, *Lawyers Weekly*, *Bloomberg's Wealth Manager*, *Financial Planning*, *Kiplinger's Retirement Report*, *Medical Economics*, *Newsday*, the *New York Post*, the *Naples Daily News*, *Individual Investor*, CNBC, CBS News, Reuters Money, *Fox Business*, Bloomberg, [TheStreet.com](#), *Observador*, and Dow Jones (formerly CBS) Market Watch.

Here is his commentary:

EXECUTIVE SUMMARY:

In [Revenue Procedure 2022-32](#), the Internal Revenue Service extended the time for filing an estate tax return to elect portability without a private letter ruling from two years after death to five years after death.

FACTS:

The executors of a decedent's estate may elect portability for the decedent's unused spousal exclusion (DSUE) amount.

The election is made on the estate tax return (Form 706).

If the estate is required to file an estate tax return, the election must be made on a timely filed return. This requirement is statutory, so the IRS may not extend it. The estate tax return is due nine months after death. An estate may obtain a six-month extension.

However, if the estate is not required to file an estate tax return, the IRS has discretion to extend the time for filing the return.

In Rev. Proc. 2017-34, the IRS granted a blanket extension until two years after death to file returns to elect portability where an estate was not required to file a return. Beyond that date, the estate had to apply for a private letter ruling to obtain an extension of time to file a return to elect portability.

On July 8, 2022, the IRS issued Rev. Proc. 2022-32, which extends the time to file a portability return to five years from the date of death.

The return must say at the top of page 1 "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)."

COMMENT:

The IRS was receiving a large number of ruling requests applying for an extension of time to elect portability in estates not required to file a return.

As a result, on June 26, 2017, the IRS issued Rev. Proc. 2017-34, allowing an estate to file an estate tax return within two years of death to elect portability if it were not required to file a return.

The IRS continued to receive a substantial number of ruling requests from estates not required to file returns, applying for an extension of time to file returns to elect portability where more than two years had passed since the decedent's death.

This could happen for various reasons. The surviving spouse or a child might consult different counsel for his or her own estate planning, who might spot the issue. The substantial increase in the stock market in recent years may increase the likelihood that the issue will be spotted. Surviving spouses may be more conscious of the estate tax exclusion amount as the date when it is scheduled to revert to the pre-2018 level (January 1, 2026) draws closer.

The IRS said that the number of these ruling requests continues to place a significant burden on their resources, which indicates a need for further relief.

The IRS has observed that a significant percentage of these ruling requests have been from estates of decedents who died within the previous five years.

Accordingly, the IRS issued Rev. Proc. 2022-32, extending the time for filing portability returns to five years from death for estates not required to file returns.

The IRS will close the file on any pending ruling requests from estates eligible for relief under Rev. Proc. 2022-32, and will refund the user fees.

In the author's view, the best practice is to file a portability return whenever there is any reasonable possibility that the surviving spouse's estate (plus adjusted taxable gifts) might exceed the estate tax exclusion amount at his or her death, taking into account possible future increases in value of assets, the scheduled reversion of the estate tax exclusion amount to pre-2018 levels in 2026, and the possibility that the estate tax exclusion amount could be reduced below that level, as has been proposed.

An estate will likely incur much of the cost of the portability return even if it doesn't file a portability return. The executor has to determine the value of the assets (other than cash or retirement benefits) in order to determine the

basis. The executor may have to determine the value of the assets for an inventory, for state estate or inheritance tax returns, or for making distributions.

The cost of not electing portability could be substantial if the surviving spouse's estate (plus adjusted taxable gifts) exceeds the estate tax exclusion amount at the time of his or her death.

Concluding Observation

Even if an estate is not required to file an estate tax return, if the decedent is survived by a spouse, the executors should consider filing a return to elect portability for the DSUE.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Bruce Steiner

CITE AS:

LISI Estate Planning Newsletter #2972 (July 8, 2022) at <http://www.leimbergservices.com>. Copyright 2022 Leimberg Information Services, Inc. (LISI). All rights reserved. Reproduction in Any Form or Forwarding to Any Person Prohibited Without Express Permission. This newsletter is designed to provide accurate and authoritative information regarding the subject matter covered. It is provided with the understanding that **LISI** is not engaged in rendering legal, accounting, or other professional advice or services. If such advice is required, the services of a competent professional should be sought. Statements of fact or opinion are the responsibility of the authors and do not represent an opinion on the part of the officers or staff of **LISI**.

CITE:

Revenue Procedure 2022-32: <https://www.irs.gov/pub/irs-drop/rp-22-32.pdf>.

[Click here to comment on this newsletter.](#)

HELP US HELP OTHERS! TELL A FRIEND ABOUT
OUR NEWSLETTERS. JUST **[CLICK HERE.](#)**

[Click Here](#) for Steve Leimberg and Bob LeClair's **NumberCruncher**
and **Quickview** Software, Books, and Other Resources