

May 13, 2019 | Estate Planning, Tax, & Probate, Insights

# Don't Lose Your Spouse's Unused Estate and Gift Tax Exemption

By: Rich May

Now that you have filed (or extended) income taxes, it is time to think about your estate taxes! Specifically, for high net worth couples, it is necessary to do a little bit of future planning in order to maximize your potential Federal estate tax exemptions.

In the past, advisors recommended that couples evenly divide their assets and hold such assets individually – "asset balance" – so that spouses would not lose all or a portion of their partner's federal exemption. That did not cover every situation though, particularly where estates grew following the passing of one spouse. Since 2010 though, the "portability" rule allows any unused lifetime federal estate tax exemption of a deceased spouse to be transferred to the surviving spouse if the proper elections are made. The Federal individual exemption recently was increased to $11.4 million which is a significant tax-free amount to risk losing all or part of.

Now with portability, a married couple has a total federal estate tax exemption of $22.8 million. However, portability is not automatic. Any unused exemption is only ported if you take certain steps to take advantage of portability. First, the executor must make an election in the estate's tax return of the first spouse to pass away. This can be problematic because very few estates actually have to file tax returns, and the portability election is not something typically considered, so unused exemptions can easily be lost rather than transferred to the surviving spouse. Furthermore, a couple's revocable trusts should contain formulas to effectuate the ability to port. Trusts that were set up too long ago will not have such formulas because portability became available in 2011, and was only made permanent in 2013. Finally, couples must carefully consider state law and taxes. In Massachusetts, spouses should consider funding their revocable trusts with $1 million in order to take advantage of Massachusetts' $1 million exemption that cannot be ported.

Federal (and state) estate taxes and planning are very complicated, and making sure that you and your spouse are prepared to take advantage of portability is one of the most significant things you can do to prepare. Rich May estate planning attorneys can advise




### Related Services

Estate Planning, Tax & Probate

### Related Attorneys

Danielle Justo

©2026 Rich May, P.C. All Rights Reserved 

and assist couples on portability and other estate planning and probate matters.

Anyone with questions, or in need of assistance in any probate matter, can contact Rich May, P.C. attorneys Danielle Justo and Nathaniel Donoghue.

© 2019 by Rich May, P.C. All rights reserved.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Nathaniel Donoghue.