

Estate Planning: “What is this Portability Stuff?”

On January 1, 2013 Congress passed the American Taxpayer Relief Act of 2012 which was highly publicized in extending the current Income Tax rates (“Bush Tax Cuts”) for those individuals earning less than \$400,000 (\$450,000 for married couples filing jointly). A part of the law that was much less publicized was the provisions regarding the Federal Estate Tax Laws.

Many people are not aware that the Federal Government has an Estate Tax or “death tax” because of the fact that it only affects people with millions in assets. What some people also fail to realize is that a million dollars is not that much money anymore, and with the way the Federal Reserve is printing money it is possible that a million dollars will not be much at all in the near future.

The general rule for the Federal Estate Tax is currently that you do not get taxed on the first \$5.25 million in assets that you transfer. Anything above the \$5.25 million can be taxed at up to a 40% tax rate (meaning that you pay the government \$40,000 for every \$100,000 that passes on to your heirs!). People with large land holdings, a small business that becomes successful or land with possible mineral rights in the Marcellus Shale could easily become subject to this tax under the right conditions.

So what is this Portability thing? In 2011 the IRS created rules that allow a person to “preserve” the unused amount of their spouse’s Federal Tax Exemption (thus making it “Portable”). Most husbands and wives have all ownership of accounts and property in joint names. This means that upon the first of them dying, there is no Estate Tax on any of the assets going to the survivor and the whole \$5.25 million of that person’s Federal Tax Exemption is left unused. If the surviving spouse still has a large amount of assets, runs a business that becomes successful, inherits a large amount from family, and dies with an estate above the \$5.25 million amount then they could be paying hundreds of thousands of dollars in Estate Tax that could otherwise be going to heirs.

How does Portability work? In order to use portability, the surviving spouse must file a Federal Estate Tax Return within 9 months of the death of his/her spouse. Since most people do not know the rule, and instead do nothing, the option for Portability is often wasted. Although most people will never have the good fortune of owning enough property/assets to be over the \$5.25 million exemption, the large amount of tax that could be due if that does occur means any person losing a spouse should consider meeting with an Attorney who works with Estate Planning to determine if Portability is for them. The alternative could be a lot of tax being paid to the Federal Government instead of being paid to children, family, and loved ones.

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