The Perils and Prospects of Portability

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With the passage of federal tax relief laws in recent years, the porting of unused federal estate tax exemptions has proven to be an important federal estate tax saving strategy, especially among individuals who have accumulated substantial wealth. This discussion considers the changing legal landscape, requirements for federal portability elections, the status of portability under state law, complications with portability. This discussion also presents some helpful practitioner guidance and tips.

Introduction

Generations of attorneys and accountants have utilized estate planning tools like the credit shelter trust (also often called the "A/B," "family," or "bypass" trust) to minimize potential state and federal estate taxes for the families that they work with.

Recent changes to the federal income tax rates, estate tax rate and the federal exclusion amount have caused a ground shift beneath some of these commonly used estate planning and tax strategies.

As a result of changes to the federal estate and income tax structures since 2010, and especially in light of the introduction of the option to "port" unused federal estate tax exclusion of the deceased spouse to the surviving married spouse, clients should be invited to review their current estate plans to reevaluate the tax implications of their planned asset transfers.

Portability under Federal Law

On June 7, 2001, George W. Bush signed the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), ushering in dramatic changes to the U.S. Tax Code. These changes included increasing the federal estate tax exclusion threshold from $675,000 to $3,500,000 over an eight-year period. Then, for one year (2010), the estate tax was repealed.

EGTRRA was scheduled to expire on January 1, 2011, at which point the rules, rates, and exemptions would return to 2001 levels. However, Congress extended some of the key provisions of EGTRRA for two years with the enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("2010 Tax Relief Act"). The 2010 Tax Relief Act raised the federal estate tax exclusion to $5,000,000[1] and established a top marginal federal estate tax rate of 35 percent.

The 2010 Tax Relief Act also included a provision that allowed the designated executor, which in many cases is the surviving spouse, to elect to transfer the unused federal exemption of the deceased spouse and add it to his or her own basic exclusion amount (BEA). This concept is called "portability." However, this provision was set to expire on December 31, 2012.

Then the American Taxpayer Relief Act of 2012 (ATRA) was enacted on January 2, 2013, and the portability election for the deceased spouse's unused exclusion (DSUE)[2] was extended and became permanent. The BEA continues to be indexed for inflation and the federal estate tax rate was increased to 40 percent.

As a result of inflation adjustments, the 2013 BEA was increased to $5,250,000, and for 2014 the BEA has increased to $5,340,000. With the continuing increases in the BEA more and more estates will be exempt from any federal estate tax, and taxable estates will pay less federal estate tax.

As an example, let's assume that the first spouse died in 2014 with all of his or her assets owned in joint title with the surviving spouse. Assuming further that the deceased spouse made no gifts during

his or her lifetime that required the filing of a federal Form 709 gift tax return and as a result had a DSUE of $5,340,000. The executor of the deceased spouse would then be allowed to elect to increase the surviving spouse's total federal applicable exclusion amount up to $10,680,000 by electing to "port" the DSUE of the first spouse and add it to the surviving spouse's BEA.

One of the ramifications from portability is that estate planners must now compare the income tax savings resulting from the tax basis adjustment equal to the fair market value as of the date of death[3] when the second spouse dies with the estate tax savings created by various planning options such as the traditional credit shelter trust.

A DSUE election made under these circumstances may be worth as much as $2,136,000 ($5,340,000 times 40 percent) in federal estate tax savings to those who receive assets from the surviving spouse either during the surviving spouse's lifetime or at his or her death.

Furthermore, if there is a significant income tax basis increase when the surviving spouse dies, there could be substantial income tax savings when the property is subsequently sold.

Do Similar Portability Elections Exist Under State Law?

There are no portability provisions similar to federal law in all but two states. Hawaii allows the surviving spouse to port the unused exemption for decedents who died after January 25, 2012, and, at the time of this writing, Delaware is considering adding portability provisions to its estate tax regulations.

For a married couple living in a state with no state estate tax or in a state with a state estate tax but the combined value of the couples' estate is less than the state exclusion amount,[4] the surviving spouse and the other heirs of the estate are not likely to spend the time or money to prepare a Federal Form 706 to make the DSUE election. From their perspective: If the filing of a federal estate tax return and a state estate tax return is not required, why waste the money? But such a decision may be shortsighted.

If the surviving spouse won the lottery, or was awarded a significant personal injury judgment, or experienced a significant wealth enhancement event, then the heirs may later regret that a portability election was not made.[5]

Generally, there is no downside to making the portability election even for spouses with estates valued substantially less than the applicable estate exclusion amount.

If the first spouse to die is a resident of a state with a state estate tax, such as Oregon or Washington, and he or she dies as a resident of that state with an estate valued in excess of the state exemption amount but less than his or her federal BEA, then it will probably be necessary to file a state estate tax return, but no federal estate tax return will be required.

In this case, the cost of preparing and filing a Federal Form 706 under these circumstances may be minimal, as many state estate tax forms require the preparation of the Federal Form 706 asset and liability schedules to attach to the state return anyway.

Since most of the work to complete the federal return has to be finished in order to prepare the state return, then it would make sense to file the federal return and make the portability election just in case the surviving spouse has the good fortune of accumulating a larger estate. The heirs will appreciate that a DSUE election was made when the first spouse died since the additional federal estate taxes are easily avoided.

When the heirs learn that the surviving spouse could have significantly reduced or avoided the federal estate tax with a timely filed portability election after the death of the first spouse, they may question why the professionals who advised the surviving spouse and the executor after the first spouse died did not recommend that a DSUE election be made. This is especially true if a state return has been prepared and filed.

What Are the Requirements to Make a Federal Portability Election?

In order to make a federal portability election, a Form 706 federal estate tax return must be filed in a timely manner. The portability election provisions on the Form 706 need to be completed even though

no federal estate tax is due.[6] Once the election is made, it is irrevocable.

The initial filing deadline is nine months after the date of death. If a timely extension application is filed within nine months following the date of death, the time for filing a Form 706 federal estate tax return and making the portability election can be automatically extended for an additional six months.

The surviving spouse, unless he or she is appointed by a probate court as the executor, does not have the exclusive right to make the portability election. This can be a problem if the executor named in the will and appointed by the probate court is a descendent of the deceased spouse, but not a descendant of the surviving spouse. Due to animosity or other issues, the executor may not be willing to make the portability election.

Recent Development: Service Expands Estate Tax Portability Options For Nonfilers

Prior to January 27, 2014, the only option to obtain permission to make a late portability election was to request a private letter ruling under Treasury Regulation Sections 301.9100-2 and 301.9100-3 and pay a significant user-fee ($2,000 to $10,000).

On January 27, 2014, the Internal Revenue Service (the "Service") issued Revenue Procedure 2014-18, which provided relief for estate representatives who now wish to make a portability election but did not file a federal estate tax return in a timely manner.

If the deceased spouse died after December 31, 2010, and before January 1, 2014, and the estate was not required to file a federal estate tax return; it is now possible for the executor to file a federal estate tax return and make a delayed portability election.

If the estate qualifies under these circumstances, it is no longer necessary to seek a private letter ruling or pay any user fees to request permission to file an estate tax return after the due date. The late-filed tax return[7] must be filed by December 31, 2014.

As a result of *United States v. Windsor*,[8] this relief is also available for the surviving spouse of a same-sex marriage. However, this relief is not available for domestic partners who are registered but not married in a state or county that authorizes same sex marriage.

If the first spouse died after December 31, 2010, and prior to January 1, 2014, consideration should be given to reviewing this opportunity with the surviving spouse to determine if the filing of Form 706 federal estate tax return and making a portability election would be appropriate for the surviving spouse.

Revenue Procedure 2014-18 does not apply to taxpayers that filed an estate tax return in a timely manner and either elected portability or opted out. Taxpayers that are not eligible for relief under this revenue procedure may request an extension of time to make the portability election by requesting a letter ruling under the provisions of Regulation Section 301.9100-3.

Complications with Portability

Portability is complicated. Here are some examples:

1. Portability can simplify the planning process, reduce up-front costs, and may reduce or eliminate federal estate taxes due upon the death of each spouse. A portability election can be useful when a significant part of the decedent's estate consists of assets that are hard to transfer to a credit shelter trust, such as annuities, retirement plan accounts and the personal residence.

   However, portability does not provide families with the opportunity to utilize some of the divorce protection, asset protection, and generation skipping planning tools that a more traditional credit shelter trust-based plan may allow.

2. The DSUE is not subject to subsequent inflation adjustments. Thus, as assets covered by the DSUE increase in value above the original DSUE amount, these increases will be subject to federal estate tax.

   On the other hand, if the first spouse had utilized all of his or her exemption amount and fully funded a credit shelter trust, $5,340,000 plus any additional increases in value would be exempt from federal estate tax and not included as part of the surviving spouse's estate.

   Note that once elected, only the DSUE is not subject to inflation adjustments. The surviving spouse's BEA continues to accrue the inflation adjustments until the surviving spouse dies.

3. It is important to note that lifetime gifts made by the surviving spouse in excess of the annual gift exclusion will first be deducted from the deceased spouse's DSUE before using the surviving spouse's BEA.

   Let's consider the following example: A is married to B. B dies with a DSUE of $3,000,000 and A makes a portability election to transfer $3,000,000 of B's DSUE to A.

As a result, A has a combined exclusion of $8,340,000 (A's BEA of $5,340,000 plus B's DSUE of $3,000,000). A then makes a gift of $2,000,000 in assets in excess of the annual gift exclusion. The $2,000,000 will be deducted against B's DSUE.

After the $2,000,000 gift (deducted from B's DSUE), A retains his or her BEA of $5,340,000 plus B's remaining DSUE of $1,000,000.

4. If the surviving spouse remarries, and the new spouse dies before the surviving spouse, the unused DSUE of the first deceased spouse will terminate. Thus, it is possible for the surviving spouse to lose the DSUE of the first spouse as a result of the death of the new spouse.

   If the surviving spouse remarries, he or she should consider making lifetime gifts in order to use the DSUE of the first deceased spouse.

   Let's consider the previous example with the following additions: After making the $2,000,000 gift described in the previous paragraph A marries C, and C then dies. A immediately loses the remaining $1,000,000 of B's DSUE because B is no longer the last deceased spouse.

5. Blended family structures add a layer of complexity to portability because a surviving spouse can use the DSUE to make significant gifts to his or her children without using his or her own BEA and exclude the children of the last-deceased spouse to the tax detriment of the decedent's children.

6. Portability also does not work well in complex family structures when the probate court appointed executor is not related to the surviving spouse.

   Since the court appointed executor has the exclusive right to make a portability election, then the executor who could be a child from a prior marriage is in control of the portability election, and may want to sell the right to make a portability election to the surviving spouse.

7. The generation skipping tax exemption (up to $5,340,000 in 2014) cannot be allocated to the DSUE. Thus, property passing from the surviving spouse to grandchildren and other skip persons in excess of the surviving spouse's BEA will be subject to generation skipping tax (GST) tax.

   However, one way to mitigate this issue is to allocate the GST exemption to property passing to a QTIP trust established as part of the deceased spouse's estate plan.

8. There is no statute of limitations on federal estate tax returns which elect portability. The Service may adjust the return of the first-deceased spouse as it relates to the DSUE election; however, the Service may not assess additional tax on the return of the first-deceased spouse if the statute of limitations on the first return has expired.

Is Portability Useful for Married Couples with Lower Net Worth?

Portability is most useful for couples who have accumulated substantial wealth and have children who are the descendants of both parents. When a married couple's combined marital estate value is in excess of the BEA ($5,340,000 for 2014) but less than two times the BEA ($10,680,000 for 2014), portability may allow for a straightforward estate plan that does not require complex trust arrangements and instead essentially says, "Everything I own goes to my spouse."

Approximately 15 states continue to impose a death tax based on the taxable value of an estate from $675,000 to $5,340,000. Establishing a credit shelter trust to shelter the amount that can pass free of state estate tax in the taxpayer's state of residency may still be prudent.

In most states, if the first spouse to die leaves all of his or her assets to the surviving spouse (as outlined in the scenario discussed earlier), the state estate tax exclusion amount of the first spouse will be wasted.

In general, even if a married couple is not likely to ever have an estate in excess of their state's estate tax exclusion, a federal portability election should at least be considered because the surviving spouse could experience a significant increase in wealth from a personal injury settlement, lottery winnings, significant asset value increase or some other wealth enhancement opportunity.

If the first spouse to die has an estate in excess of the state exclusion but less than $5,340,000 a state estate tax return will probably be due, but a federal estate tax return is not required. Because most state estate tax returns require the preparation of the Federal Form 706 asset and liability schedules to attach to the state return, filing a federal estate tax return with portability election should be considered.

Factors to analyze are the age and longevity of the surviving spouse, the likelihood of remarriage,

the likelihood of a significant inheritance, the potential for a significant increase in the value of business interests and investment assets, and the possibility of winning a lottery.

If the surviving spouse dies with a federal taxable estate and no portability election has been made, the heirs and representatives will likely look to the executor, if someone other than the surviving spouse, and the professionals who advised the executor and the surviving spouse to pay for the increased tax that could have been avoided.

If a state return is filed after the first spouse's death, then the heirs of the surviving spouse may question why a Federal 706 was not prepared and filed since the form was already substantially completed.

Practice Tips: Obtain Decision from Executor and Surviving Spouse

A practical approach to address the portability issue from an adviser's perspective is to provide a written explanation to the surviving spouse and the executor, if a different person, about the portability options for the surviving spouse.

The adviser should consider obtaining a signed statement from the surviving spouse and the executor confirming whether or not he or she chooses to file a Form 706 estate tax return and elect portability. As a result, the professionals providing assistance to the surviving spouse and the executor would have written evidence for their file as to whether or not a decision was made to elect portability.

Portability provides estate planners with a useful tool when planning a married couple's estate. When planning for married couples in states that assess state estate taxes, the state and federal estate tax laws must be carefully reviewed to determine whether portability will be advantageous.

Exhibits 1, 2, and 3 illustrate sample client letters that the estate attorney may send to a client advising the surviving spouse/executor about his or her portability options.

Summary and Conclusion

Portability under federal law has undergone legislative changes since 2010. The current federal law under the American Taxpayer Relief Act of 2012 was enacted on January 2, 2013. This law (1) made permanent the deceased spouse's unused exclusion or DSUE portability election and (2) increased the federal estate tax rate to 40 percent.

The basic exclusion amount, or BEA, is indexed to change with inflation. Currently, the BEA for 2014 is $5,340,000. For wealthy individuals, electing the DSUE may result in federal estate tax savings up to $2,136,000.

This discussion explains the importance of understanding the relevant rules and guidelines related to DSUE portability, such as:

1. portability elections under applicable state law,
2. requirements to make a federal portability election,
3. estate tax portability options for nonfilers,
4 navigating the complexities of portability,
5. relevance of portability for lower net worth couples,
6. helpful practice tips for attorneys or advisers in estate planning and tax strategies, and
7. sample client letters providing information about options in portability.

Notes:

1. Estates of decedents who died in 2010 were given the option to choose the no estate tax with no cost basis adjustment option or elect to utilize a $5,000,000 estate tax exclusion and obtain the traditional cost basis adjustment that occurs when an individual dies.
2. See IRC 2010(c).
3. See IRC § 1014. Basis of property acquired from a decedent: (a) In general. Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged,

Exhibit 1
Sample Client Letter Regarding Portability

Re: Estate of _____
Date of Death: _____
9-Month Filing Date: _____
Federal Portability Decision

Dear Surviving Spouse [and Executor]:

With the passing of the American Taxpayer Relief Act of 2012, the spousal portability provision under federal estate tax law became permanent. As a result [*name of Executor*], the executor, [*and name of surviving spouse, if different*] need to determine whether it is in the best interests of the beneficiaries to make an election to combine the deceased spouse's unused exclusion (DSUE) amount with the surviving spouse's basic exclusion amount (BEA).

By electing to combine the DSUE with the surviving spouse's BEA (currently $5,340,000) with a portability election, you could increase the surviving spouse's total applicable exclusion amount up to $10,680,000[9] depending upon a number of factors discussed below. The approximate tax benefit of the DSUE could be as much as $2,136,000.

Even though this is a significant tax savings, there are no clear-cut formulas or directives that can give you perfect guidance with respect to making the portability election. However, there are a number of relevant factors that need to be considered in making your decision, such as: the size of the decedent's gross estate, the size of the decedent's remaining applicable exclusion amount at [his/her] death, the age of [his/her] surviving spouse, the decedent's existing estate plan, the anticipated growth of the decedent's assets, and current and anticipated estate, gift, and income tax laws. Since the decision impacts not only the surviving spouse, but also the estate's other beneficiaries, we recommend that you consider reviewing the matter with all of the beneficiaries.

The estimated value of the deceased spouse's gross estate is approximately $_____. Based on current estimates, the deceased spouse's estate will use approximately $_____ [*use estimate of exemption that will be used by the decedent's estate*] of his [her] BEA leaving approximately $_____ [*insert estimate of remaining exemption*] of his [her] BEA unused.

When the deceased spouse died on [*insert date of death*], his [her] estate was had a DSUE of approximately [insert estimate deceased spouse's remaining exemption]. The recently enacted portability provisions of the federal estate tax law allow the executor to elect to add the DSUE to the surviving spouse's exemption amount.

The surviving spouse has an exemption of [*$5,340,000 use current basic exemption*]. If the deceased spouse's unused exemption amount of [*insert estimate deceased spouse's remaining exemption*] were combined with your exemption of [*$5,340,000 use current basic exemption*], the surviving spouse would have a total exemption of approximately [*$9,340,000 insert estimate of deceased spouse's remaining exemption plus the surviving spouse's basic exclusion amount*]. In other words, with the portability election, the surviving spouse could have an estate with a value of up to [*$9,340,000 insert estimate of deceased spouse's remaining exemption plus the surviving spouse's basic exclusion amount*] before any federal estate taxes would be due.

Please note that the above discussion only applies to federal estate tax. The [*insert state the was decedent's domicile*] exemption amount is only [*insert state exemption amount, if any*] per estate, and [*insert state that was decedent's domicile*] has no portability election.

There are two alternatives to consider. If the surviving spouse's estate will never exceed the basic exclusion amount [*currently $5,340,000 use current basic exemption*], then the portability election to include the DSUE amount will not provide any benefit.

If, on the other hand, the surviving spouse accumulates sufficient wealth to have a federal taxable estate with a value in excess of [*$5,340,000 use current basic exemption*], then the DSUE election could provide a significant benefit to the surviving spouse's heirs.

For example, if the executor had made a DSUE election after the first spouse died, the surviving spouse would be able to transfer up to [*$9,340,000 insert estimate of deceased spouse's remaining exemption plus the surviving spouse's basic exclusion amount*] to the heirs, federal estate tax-free, when he or she dies. In this scenario, a timely filed portability election would be extremely helpful because the surviving spouse's estate would be able to save a significant amount of federal estate taxes.

However, in order to make the portability election, a Federal Form 706 estate tax return must be filed within nine months of the date of death, unless a six-month extension is granted. The time for filing a Federal Form 706 estate tax return can automatically be extended for an additional six months if an Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes (IRS Form 4768) is filed within nine months of the date of death. The initial due date for filing the estate tax return is [*insert date which is nine months from the date of death*]. If an Application for Extension is filed on or before [*insert date which is nine months from the date of death*], the due date for filing the estate tax return can be extended to [*insert date which is 15 months from the date of death*].

Exhibit 1 (continued)
Sample Client Letter Regarding Portability

The costs of this tax filing are the price of securing the DSUE amount for the surviving spouse and [his/her] beneficiaries. Because [*insert state*] has a state estate tax, you would normally be required to file a [*insert state*] Form 706 estate tax return if the deceased spouse's gross estate exceeds [*insert the state exclusion amount*] in value. The only difference is that now you will have to file the federal return with the Internal Revenue Service, whereas without portability you would only have had to file the [*insert state*] Form 706 with the State of [*insert state*] Department of Revenue.

As a surviving spouse you have a unique opportunity with the portability election. We recommend that you discuss this election with your estate planning advisors. With this letter we have included two alternatives for you to consider. Please review the two alternatives provided on the next two pages.

- If you do not want to make a portability election, please sign the next page titled "Alternative #1 – Do Not Make a Federal Portability Election" and return it in the enclosed envelope.
- If you do want to make a portability election, please sign the last page titled "Alternative #2 – Make a Federal Portability Election" and return it in the enclosed envelope.
- If we do not receive either a signed Alternative #1 or Alternative #2 back from you, we will assume that you do not want to make a portability election.

If, for any reason, you have questions or none of these choices are acceptable, please feel free to contact us to discuss this further.

Very truly yours,

Attorney Name

Required IRS Disclosure: You may not use any tax advice contained in this letter to avoid penalties imposed under federal tax law.

Exhibit 2
Alternative #1 - Do Not Make a Federal Portability Election

Please sign the following page and return a signed copy of this letter to us if you do not wish to file a Federal Form 706 estate tax return and make a federal portability election for the Estate of [*insert name of deceased spouse*].

I/We, the Surviving Spouse and Executor, have read the foregoing letter and have had an adequate opportunity to discuss the questions that I/we had concerning the pros and cons of the option to utilize the Deceased Spouse's unused exclusion amount.

I/We do not wish to incur the fees to prepare the necessary tax forms and direct the accountants and the attorneys not to file a Federal Form 706 estate tax return in the Estate of [*insert name of deceased spouse*].

[*Use this paragraph if the equivalent state form Form 706 is being filed*] I/We understand and agree that a State Form 706 is in the process of being prepared, and that a [*insert state*] estate tax may be due.

I/We understand that by directing the accountants and attorneys not to prepare and file a Federal Form 706 estate tax return, that I/we will not be able to take advantage of the deceased spouse's unused federal exclusion amount, and that if the surviving spouse has the good fortune of accumulating assets valued in excess of the basic exclusion amount (currently $5,340,000), the surviving spouse's estate will be responsible for paying a federal estate tax that could have been avoided.

Dated: [Month] [Day], [Year]

_____

Surviving Spouse (Signature)

_____

Executor (Signature)

Exhibit 3
Alternative #2 – Make a Federal Portability Election

Please sign the following page and return a signed copy of this letter to us if you wish to file a Federal Form 706 estate tax return and make a federal portability election for the Estate of [*insert name of deceased spouse*].

I/We, the Surviving Spouse and Executor, have had an adequate opportunity to consult with the accountants and the attorneys to evaluate the pros and cons of proceeding to file a Federal Form 706 estate tax return in connection with the Estate of [*insert name of deceased spouse*] ("Deceased Spouse") for purposes of making an election to claim Deceased Spouse's unused exemption amount as part of the surviving spouse's exclusion amount.

I/We also understand that there will be accounting fees and attorney fees in connection with the preparation of the Federal Form 706 estate tax return. Notwithstanding those additional costs, I/we nevertheless request that the accountants and attorneys file a Federal Form 706 estate tax return and make a portability election with a timely filed return.

Dated: [Month] [Day], [Year]

_____
Surviving Spouse (Signature)

_____
Executor (Signature)

or otherwise disposed of before the decedent's death by such person, be—(1) the fair market value of the property at the date of the decedent's death.

4. For example, Oregon has a state estate tax with a $1,000,000 exemption. If the decedent's gross estate is valued at less than $1,000,000, the estate does not have to file an Oregon estate tax return.

5. As discussed further in the next section, there is a filing deadline for making the DSUE election.

6. For smaller estates that are not required to file a federal estate tax return, a special rule applies to make the completion of the 706 return less expensive and burdensome, because the personal representative does not have to report the value of certain transfers that qualify for the marital or charitable deduction and may, with due diligence, estimate the total fair market value of the gross estate and provide only a description of the property, the owner, the beneficiary and information sufficient to establish the estate's right to the marital or charitable deduction.

   It is worth noting that this "estimated value" method may not work in situations where exact asset values are needed to determine cost basis for taxable bequests and/or certain partial elections, like [write out] (QTIP) and disclaimer.

   Also, if the estate must file a state estate tax return, the estimated value method may not be an option for return.

7. As an example, assume the first spouse died in 2012 with an estate value of $2,120,000, but did not file a federal estate tax return. The BEA for 2012 was $5,120,000. Assume that his estate uses $2,120,000 of the deceased spouse's BEA which leaves $3,000,000 remaining as the DSUE. The executor of the estate can now file a federal estate tax return by December 31, 2014, and elect to combine the $3,000,000 DSUE amount with the surviving spouse's BEA (currently 5,340,000 for 2014), giving the surviving spouse a total federal estate tax exclusion in 2014 of $8,340,000.

8. United States v. Windsor, 570 US 13 (2013).

9. Note: The $10,680,000 is an estimate of the Deceased Spouse's Unused Exclusion Amount plus your own Applicable Exclusion Amount (AEA) that can vary significantly depending on prior gift history, estate liabilities, estate values, and the impact of inflation adjustments to the AEA.

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Mr. Cheyne would like to thank Glen Goland for his contribution to this discussion.