



Today, the Internal Revenue Service issued Revenue Procedure 2014-18 addressing an extension of time for the election of portability on a decedent's Form 706, estate tax return. Portability is when an election is made under the Internal Revenue Code for a decedent's unused exclusion amount (DSUE) to be available for the surviving spouse's subsequent gifts or transfers at death.

Generally, a portability election must be made no later than 9 months after the death of the taxpayer, or the expiration of the extension to file the Form 706, if a proper extension was filed.

Rev Proc 2014-18 grants relief for those estates that are not required to file a tax return (those with assets under the exemption, currently \$5,340,000). Under the Rev Proc, the IRS has allowed an extension for those dying between 2011 and December 31, 2013 to elect portability on a properly prepared Form 706 on or before December 31, 2014.

While this Rev Proc is in direct response to the Windsor case, in which same sex married couples are recognized under federal law and allows a same sex married couples whose spouse died between 2011 and December 31, 2013 to file a Form 706 and elect portability, the Rev Proc does not limit the extension to same sex married couples. This extension affects all married couples, when a decedent died and did not file for portability when a Form 706 was not required.

Rev Proc 2014-18 does not address estates required to file an estate tax return. In those estates, if the timely filed return did not include a portability election, then an extension may be granted through a request for a private letter ruling.



### KATHERINE WENSINK

My broad legal background and ability to identify desired outcomes allow me to develop and implement the best estate plan for your family.

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