

**TKD**

# LEGAL ALERT

## **New Tax Law Impacts Estate Planning For Married Couples**

The Tax Relief Act of 2010 introduced the concept of “portability” to estate tax planning. Portability allows a surviving spouse to use their predeceased spouse’s unused federal estate tax exclusion amount.

Each U.S. citizen is allowed an estate and gift tax exemption. In 2011, it was \$5 million. In 2012 it is \$5,120,000. Prior to 2011, without some estate planning, the unused amount for the first spouse to die would have been wasted. This new provision allows a deceased spouse’s unused exemption amount (or “DSUEA”) to pass to the surviving spouse to be used in addition to his or her own exemption.

There is one important catch—in order to preserve the unused exemption amount for the surviving spouse (who could lose it if he or she remarries), estates must file a timely federal estate tax return. This return is due nine months after death, or fifteen months if you request an extension.

Even if the first spouse to die has little or no wealth and it is not expected that the surviving spouse will ever have assets in excess of the federal exemption, in many cases, we recommend the filing of a federal estate tax return to preserve the DSUEA. In the event of significant financial changes, this prevents you from having to pay unnecessary estate taxes that could have been minimized or avoided.

To give some relief, the IRS issued a notice on **February 17, 2012** that allows certain estates of married individuals who died during the first six months of 2011 and which did not file for extension during the nine month period, an extension to make the portability election. To qualify, estates must be of a decedent (1) whose date of death is after December 31, 2010 but before July 1, 2011 (2) who is survived by a spouse and (3) whose gross estate does not exceed the \$5,000,000 exclusion amount for 2011. The executor must file Form 4768 to request the extension no later than 15 months after the decedent's date of death.

Of course, we don’t currently know:

- What the exemption amount will be in 2013, or
- If Congress will allow the “preserved” unused exemption (based on 2011’s \$5,000,000 and 2012’s \$5,120,000) to remain with the surviving spouse if exemption reverts to a lesser amount in 2013.

TKD’s Trust and Estates Group will continue to follow these and other developments and keep you up-to-date and informed. If you have missed a filing deadline or would like to know more please contact:

Joann T. Palumbo  
Phone: 212.216.8015  
Email: [jpalumbo@tarterkrinsky.com](mailto:jpalumbo@tarterkrinsky.com)

Stephen L. Ferszt  
Phone: 212.216.1101  
Email: [sferszt@tarterkrinsky.com](mailto:sferszt@tarterkrinsky.com)

Frank H. Klein  
Phone: 212.216.1105  
Email: [fklein@tarterkrinsky.com](mailto:fklein@tarterkrinsky.com)

For more information on the Trust and Estate Group [click here](#).

© 2012 by Tarter Krinsky & Drogin LLP

*This article is published as an information service to our clients and friends. Please recognize that the information is general in nature and may not be relied upon as legal advice. Under the rules of certain jurisdictions, this material may be considered attorney advertising. Prior results do not guarantee a similar outcome.*

*Circular 230 Disclosure Notice: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachment) (1) was not written and was not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.*



New York Office: 1350 Broadway, New York, NY 10018 • Tel: 212. 216. 8000 • Fax: 212. 216. 8001  
New Jersey Office: 475 Wall Street, Princeton, NJ 08540 • Tel: 609. 683. 9494 • Fax: 609. 683. 7490  
[www.tarterkrinsky.com](http://www.tarterkrinsky.com)